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Setting Up of Business Industrial & Labour Laws

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Chapter-wise Marks Distribution

Sl. No.	Chapter	2018		2019		2020		2021		2022		2023	Avg.
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6	Conversion of Business Entities	-	-	-	5	-	4	3	4	5	-		2
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20	Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013	-	3	-	-	-	-	3	-	3	-	3	1.27

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3	Limited Liability Partnership	Chapter 3
4	Startups & its Registration	Chapter 4
5	Micro, Small & Medium Enterprises	Chapter 5
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7	Non-Corporate Entities	Chapter 7
8	Financial Services Organizations	Chapter 8
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PART I

SETTING-UP OF BUSINESS (60 MARKS)

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TYPES OF BUSINESS ENTITIES

1. Why would you prefer a Limited Liability Partnership form of organization for setting-up a business compared to a Private Limited Company?

Ans.: One can prefer Limited Liability Partnership (LLP) form of organization for setting-up a business compared to a Private Limited Company for the following reasons:

- **Cost of formation/incorporation:** Cost of incorporation of LLP is lower as compared to private company.
- **Process of incorporation:** Process of incorporation of LLP takes less time and formalities as compared to private company.
- **Change in internal rules:** Internal rules and regulation of LLP's are governed by the LLP agreement which can be changed easily by making change in agreement as per the LLP Act, 2008; whereas internal rules and regulation of the companies are governed by the Articles of Association which requires special procedure *i.e.* passing of special resolution in shareholders meeting which is time consuming and costly process.
- **Meetings:** In the LLP Act, there is no stipulation for meeting of partners either periodically or compulsory at the year end; whereas every private company must hold AGM every year. Every private company must hold 4 board meetings and gap between two meetings should not be more than 120 days. Thus, in LLP business can be conducted without any meeting by the partners of the LLP.
- **Business:** In an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms; whereas in case of a company no individual director can conduct the business of the company.
- **Borrowing power:** There are no restrictions on the borrowing powers on the LLP; whereas there are restrictions on borrowings power on the companies.
- **Accounts:** LLP can choose to maintain the accounts on cash basis/accrual basis; whereas private companies have to keep their accounts on accrual basis.
- **Audit:** Audit of LLP is not compulsory if the capital contributed does not exceed ₹ 25 lakh or if the turnover does not exceed ₹ 40 lakh; whereas audit of a company is compulsory.
- **Appointment of Company Secretary:** Appointment of Company Secretary is not provided in the LLP Act, 2008; whereas private companies may

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limit prescribed under the Companies Act, 2013.

2. Why would you prefer One Person Company (OPC) compared to a Sole Proprietorship? Explain.

Ans.: Sole Proprietorship: Sole proprietorship is recognized as one of the most common, simplest and oldest form of business entity. It is owned and controlled by one person only and the person running it is known by the name of 'sole proprietor' or a 'sole trader'.

One Person Company (OPC): One Person Company means a company which has only one person as a member. One Person Company has to be formed as a private company. The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, access to market, limited liability, and legal protection available to companies.

OPC is hybrid of Sole-Proprietor and Company form of business. The concept opens spectacular possibilities for sole proprietors and entrepreneurs as, such companies retain the character of a Sole Proprietorship, provides limited liability feature to the sole proprietor and is clothed with a legal entity distinct from its owner.

A One-Person Company (OPC) exist as a separate business entity in the eyes of law and this creates a wall between the personal assets of the investor and that of the business. Thus, these form of business organizations the personal property of the owner is protected and this gives the owner the ability to build the business credit, get loans and raise capital.

One can prefer One Person Company (OPC) form of organization for setting-up a business compared to a Sole Proprietorship for the following reasons:

- **Corporate status:** In case of sole proprietorship formal registration is not required whereas a One Person Company requires registration under the Companies Act, 2013 which gives it corporate status.
- **Distinct legal entity:** A Sole Proprietorship is not a distinct legal entity from the proprietor; whereas a One Person Company is a distinct legal entity from the business owner.
- **Liability:** A proprietor of a sole proprietorship has unlimited liability for the debts incurred by him. This means that if the business is in debt, even the personal assets of the proprietor may be used to recover the debt; whereas a One Person Company is a separate legal entity, hence the owner has a limited liability. This is the most desirable reason why many individuals are opting for an OPC.
- **Separate Property:** As there is no distinction between the owner and business in sole proprietorship therefore any creditor of the proprietorship can also claim on all the assets of the owner; whereas in OPC there is an added advantage as a company is a separate legal entity. Any property purchased by OPC will be the asset of that OPC. The member does not have an insurable interest in the property of the company.

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Ans.: Following are the main points of distinction between partnership and company:

Points	Partnership	Company
Meaning	Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.	A company means company formed and registered under the **Companies Act, 2013.** A company may be private company or public company.
Legal status	A partnership firm has **no separate existence** apart from its members.	A company is **a separate legal entity** distinct from its member.
Governing Act	Partnership is governed by the Partnership Act, 1932.	A company is governed by the Companies Act, 2013.
Minimum membership	Minimum **two** persons are required to from partnership.	Minimum number of member required to from a company are: - For private company: **2** - For public company: **7** - For one person company: **1**
Maximum membership	A partnership with objects of acquisition for gains cannot be formed beyond 50 numbers of partners. [Section 464 read with Rule 10 of the Companies (Miscellaneous) Rules, 2014]	Maximum number of member are: - For private company: **200** - For public company: Unlimited
Registration	Registration of partnership is not compulsory but the Partnership Act, 1932 had made it indirectly essential to enjoy certain benefits.	Registration of company is compulsory under the Companies Act, 2013.
Capital	Minimum capital is **not specified.**	Minimum capital for the private and public companies will be as specified in rules. [*Prior to the Companies (Amendment) Act, 2015, minimum paid-up capital for private company was ₹ 1,00,000 & for public company was ₹ 5,00,000*]
Management	All partners have a right to take part in the day-to-day affairs of the firm.	Affairs of company are managed by Board of Directors. Members cannot take part into day-to-day business.
Mutual agency	Every partner is principal as well as an agent of other partners.	A member of company is not an agent of other member or company.
Transfer of interest	A partner **cannot transfer** his interest without consent of all other partners.	A shareholder **can freely transfer** his share. However, private company can put restrictions on transfer.
Liability of a member	Liability of a partner is **unlimited.**	Liability of a member is **limited to unpaid amount** on share.
Audit	It **not compulsorily** for partnership firm's to get there accounts compulsory audited.	Company has to get there accounts **compulsorily** audited as per the provisions of the Companies Act, 2013.

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Ans.: Following are the main points of distinction between Company & Club:

Points	Company	Club
Meaning	"Company" means a company formed and registered under this Act or an existing company as defined in the Companies Act, 2013.	Club is an association of persons formed with the object to promote some common beneficial purpose.
Registration	Registration of a company is compulsory.	Registration of a club is not compulsory.
Profit motive	Most of the companies are formed with a view to earn profit.	Clubs are formed for not to earn profit.
Audit	Company has to get there accounts **compulsorily** audited as per Companies Act, 2013.	Clubs are not required to get their accounts audited.
Capital	Minimum capital for the private and public companies will be as specified in rules.	There is no capital requirement.

5. Requirement of capital affects the choice of business organization. Comment. **[June 2019 (4 Marks)]**

Ans.: Capital is one of the most crucial factors affecting the choice of a particular form of ownership organization.

(*a*) **Major Factor:** Requirement of capital is closely related to the type of business and scale of operations.

(*b*) **Heavy Capital:** Enterprises requiring heavy investment (like iron and steel plants, large scale infrastructure projects, etc.) should be organized as companies. Depending on the capital required, they can be set up as public companies and in some cases, may be in the form of listed companies by raising money from the public and being listed on the stock exchanges.

(*c*) **Small Investment:** Enterprises requiring small investment (like retail business stores, personal service enterprises, etc.) can be best organized as sole proprietorships or even as Partnerships.

(*d*) **Future capital requirements:** Apart from the initial capital required to start a business, the future capital requirements – to meet modernization, expansion and diversification plans – also affect the choice of form of organization.

(*e*) **Sole Proprietorship Capital:** In sole proprietorship, the owner may raise additional capital by borrowing, by purchasing on credit, and by investing additional amounts himself. Banks and suppliers, however, will look closely at the proprietor's individual financial resources before sanctioning any loans or advances.

(*f*) **Partnerships Capital:** Partnerships can often raise funds with greater ease, since the resources and credit of all partners are combined in a single enterprise.

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because –

- Investors are assured that their liability will be limited,
- Operations are in public domain in the transparent manner,
- Easily accessible and the ownership can be transferred to other investors.

6. Mr. X is planning to start a mobile based and web based business. In selection of suitable form of a business organization, 'degree of control and management' plays a significant role. Explain how this factor affects the choice of form of organization.
[Dec. 2020 (4 Marks)], [Dec. 2021 (4 Marks)]

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

(1) **Sole Proprietorship & OPC:** In sole proprietorship and OPC, ownership, management and control are completely fused and therefore, an entrepreneur has complete control over his business.

(2) **Partnership:** In partnership the 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.

(3) **Company:** In a company, there is divergence between ownership and management, the management and control of the company business is entrusted to the Board of Directors, who are generally the elected representative of shareholders.

Thus, a person wishing to have complete and direct control of business prefers proprietary organization 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 organization.

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

7. Sumit Bhasin has an expertise in the field of Modular Kitchen designing, he possesses adequate education too in this field. Now in order to start his venture, he wants to consult a Company Secretary for getting aware of various modes of organization and to select the best mode keeping in view their merits and demerits. As a Company Secretary, make Sumit Bhasin acquainted with available modes of organization while briefing the merits and demerits of each.
[Dec. 2022 (5 Marks)]

factors such as nature of activity, capital requirement, degree of independence required, etc. There is no readymade formula for selecting the particular type of business organization.

The choice of a business entity depends upon the will of the owners of the business entity which they want to accomplish.

The main types of business entities in India are as follows:

(1) **Sole Proprietorship:** Sole proprietorship is a form of business, wherein one person owns all the assets of the business, no legal formalities are required to create a sole proprietorship other than an appropriate licensing to conduct a business and registration of business name if it differs from that sole proprietorship. The owner reports income/loss from this business along with is personal income tax return.

Merits:

- Easy to establish and operate.
- Sole Beneficiary of Profits.

Demerits:

- Unlimited Liability
- Higher Tax Incidence.

(2) **Partnership Firm:** Partnership firms are created by drafting a partnership deed among the partners. The partnership deed is registered to make a firm. Partnership firms in India are, governed by the Indian Partnership Act, 1932. A partnership firm cannot have more than 50 members.

Merits:

- Easy to establish and operate.
- If the partnership agreement permits, a partnership could continue to exist if one of the partners dies.

Demerits:

- Unlimited Liability
- Possibility of conflicts.

(3) **Hindu Undivided Family (HUF):** A Hindu family can come together and form a HUF. HUF is taxed separately from its members. One can save taxes by creating a family unit and pooling in assets to form a HUF. HUF has its own PAN and files tax returns independent of its members.

(4) **Limited Liability Partnership (LLP):** Limited Liability Partnership is an alternate corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm, introduced in India by way of limited Liability Partnership Act, 2008.

Merits:

- Lower registration cost.
- No requirement of compulsory Audit.

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- Penalty for non-compliance.
- Inability to have Equity Investment.

(5) **Co-operative Society:** A cooperative organization is an association of persons, usually of limited means, who have voluntarily joined together to achieve a common economic end through the formation of a democratically controlled organization, making equitable distributions to the capital required, and accepting a fair share of risk and benefits of the undertaking.

Merits:

- Limited Liability
- Equality in voting rights

Demerits:

- Government Control
- Mutual Disputes

(6) **Section 8 Company:** Section 8 company is a company established for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object', provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members Section 8 Companies are registered under the Companies Act, 2013.

Merits:

- Access to tax benefits
- Improved Credibility

Demerits:

- Stringent Compliances and norms
- Profit cannot be a prime objective

(7) **One Person Company (OPC):** OPC means a company with only 1 person as a member Share holder can make only 1 nominee, he shall become a shareholder in case of death/incapacity of original stakeholder.

(8) **Private Company:** Private Company is a company which has the following characteristics:

- Shareholders right to transfer shares is restricted.
- Minimum two persons are requires to form private company.
- Number of shareholders is limited to 200.
- An invitation to the public to subscribe to any shares or debentures or any type of security is prohibited.

Merits:

- Separate Legal Entity
- Limited Liability

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Demerits:

- In stock exchanges shares cannot be quoted.
- It restricts transferability of shares by its articles

(9) **Public Company:** A public company is a company which has the following characteristics

- Shareholders right to transfer share; is not restricted
- Minimum 7 members
- An invitation to the public to subscribe to any shares or debentures or any type of security is permitted.

Merits:

- Limited liability of shareholders.
- Unlimited source of raising funding.

Demerits:

- More statutory compliances.
- Lack of secrecy.

The ultimate choice of the form of business depends upon the balancing of the advantages and disadvantages of the various forms of business. The right choice of the form of the business is very crucial because it determines the power, control, risk and responsibility of the entrepreneur as well as the division of profits and losses.

Once a form of business organization is chosen, it is very difficult to switch over to another form because it needs the winding-up, dissolution of the existing organization which may be treated as a case which is raised by one-self to face with the complex issues and procedures which ultimately results into the waste of time, effort and money.

Therefore, Sumit Bhasin is advised to choose the form of business organization after giving the due thought and consideration in respect of all the sides of the glorious coin of each form of business entity and its suitability to his business ideas.

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LIMITED, UNLIMITED & GUARANTEE COMPANIES

1. It is always mandatory for an unlimited company to have share capital. Comment. [June 2012 (5 Marks)]

Ans.: Unlimited Company [Section 2(92)]: Unlimited company means a company not having any limit on the liability of its members. Thus, the maximum liability of the member of such a company, in the event of its being wound up, might stretch up to the full extent of their assets to meet the obligations of the company by contributing to its assets.

The members of an unlimited company are not liable directly to the creditors of the company. The liability of the members is only towards the company and in the event of its being wound up only the liquidator can ask the members to contribute to the assets of the company which will be used in the discharge of the debts of the company.

An unlimited company may or may not have share capital.

2. Mahesh, therefore, wants to sue the members of the company to recover the dues. Advise Mahesh regarding the remedy available to him. [June 2015 (4 Marks)]

Ans.: As per Section 2(92) of the Companies Act, 2013, unlimited company means a company not having any limit on the liability of its members. Thus, the maximum liability of the member of such a company, in the event of its being wound up, might stretch up to the full extent of their assets to meet the obligations of the company by contributing to its assets.

The members of an unlimited company are not liable directly to the creditors of the company. The liability of the members is only towards the company and in the event of its being wound up only the liquidator can ask the members to contribute to the assets of the company which will be used in the discharge of the debts of the company.

Thus, Mahesh cannot directly sue the members of the company for recovery of his dues. He can file a claim to the liquidator of the company.

SMALL & ASSOCIATE COMPANY

3. San Industries Private Limited Company has its paid-up share capital of ₹ 3 Crore and turnover of ₹ 45 Crore as per the last audited Balance Sheet. Examining the provisions of the Companies Act, 2013, decide whether the company will be treated as small company.

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Act? **[June 2017 (5 Marks)]**

Ans.: Small Company [Section 2(85)]: Small company means a private company –

(*i*) **Paid-up share capital** of which does not exceed ₹ **4 Crore** or such higher amount as may be prescribed which shall not be more than ₹ **10 Crore** *and*

(*ii*) **Turnover** of which as per its last profit and loss account does not exceed ₹ **40 Crore** or such higher amount as may be prescribed which shall not be more than ₹ **100 Crore.**

Nothing in this definition shall apply to: [*This means following companies cannot be small companies*]

(*a*) Holding or a subsidiary company.

(*b*) Company registered under section 8.

(*c*) Company or body corporate governed by any Special Act.

San Industries Private Ltd. shall be treated as small company if its 'paid-up share capital' is below ₹ 4 Crore *AND* 'turnover' is below ₹ 40 Crore.

As per facts given in case, paid-up share capital of the company is ₹ 3 Crore *and turnover is* ₹ *45 Crore. It fulfils only one criteria and not both and hence it cannot be treated as small company.*

4. TP Pvt. Ltd. registered under the Companies Act, 2013 with paid-up capital of ₹ 3.5 Crore and turnover of ₹ 42 Crore. Explain the meaning of 'Small Company' and examine the following in accordance with the provision of the Companies Act, 2013:

(*i*) Whether the TP Pvt. Ltd. can avail the status of 'Small Company'?

(*ii*) Will your answer be different if the turnover of the company is ₹ 38 Crore? **[Dec. 2019 (5 Marks)]**

Ans.: Small Company [Section 2(85)]: *Please refer to answer of Question No. 3.*

TP Pvt. Ltd. shall be treated as a small company if its 'paid-up share capital' is below ₹ 4 Crore *AND* 'turnover' is below ₹ 40 Crore.

In view of above, answer to given case is as follows:

(*i*) Paid-up share capital is ₹ 3.5 Crore and turnover is ₹ 42 Crore.

TP Pvt. Ltd. fulfils only one criteria and not both and hence it cannot be treated as small company.

(*ii*) Paid-up share capital is ₹ 3.5 Crore and turnover is ₹ 38 Crore.

TP Pvt. Ltd. fulfils both criteria and hence it can be treated as small company.

5. Distinguish between: Small Company and Inactive Company. **[June 2016 (4 Marks)]**

Or

A Company registered under section 8 can be registered as a Small Company under the provisions of the Companies Act, 2013. Comment. **[June 2019 (4 Marks)]**

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Ans.: Small Company [Section 2(85)]: *Please refer to answer of Question No. 3.*

Inactive Company: Inactive Company means a company:

- Which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last 2 financial years or
- Which has not filed financial statements and annual returns during the last 2 financial years.

6. SDM Private Ltd. is having paid-up share capital of ₹ 3.5 Crore and annual turnover of ₹ 38 Crore. It is a wholly owned subsidiary of K Ltd. a listed company. Can SDM Private Ltd. be called a Small Company as per the provisions of the Companies Act, 2013. [Dec. 2022 (4 Marks)]

Ans.: Small Company [Section 2(85)]: *Please refer to answer of Question No. 3.*

SDM Private Ltd. cannot be treated as small company as holding or subsidiary company cannot be treated as small company even though its paid-up capital does not exceed ₹ 4 Crore and turnover does not exceed ₹ 40 Crore.

7. (*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 lakh and annual Turnover of ₹ 185 lakh is a wholly owned subsidiary of Hima Ltd. a listed Company. Can Surya Pvt. Ltd. be called a Small Company? Explain. [Dec. 2021 (5 Marks)]

Ans.: Associate Company [Section 2(6)]: 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: Significant Influence means control of at least 20% of total share capital, or of business decisions under an agreement.

Small Company [Section 2(85)]: *Please refer to answer of Question No. 3.*

Considering above provisions, answer to given case is as follows:

(*i*) 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*) Holding or a subsidiary company cannot be treated as small company and thus Surya Pvt. Ltd. cannot be treated as small company as it is subsidiary of another company Hima Ltd.

8. Distinguish between: Subsidiary Company & Associate Company [Dec. 2016 (5 Marks)]

Ans.: Following are the main points of distinction between subsidiary & associate company:

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Points	Subsidiary Company	Associate Company
Meaning	Subsidiary company means a company in which the holding company controls the composition of the Board of Directors or exercises or controls more than 50% of the total voting power either at its own or together with one or more of its subsidiary companies.	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.
Holding of Paid-up capital	Holding company holds more than 50% share capital in subsidiary company.	In associate companies, one company hold more than 20% but less than 50% of share capital.
Control	Holding company has major control in subsidiary company.	In associate companies, one company has only significant influence over other company but not major control.
Section	The term 'subsidiary company' is defined in Section 2(87).	The term 'associate company' is defined in Section 2(6).

HOLDING & SUBSIDIARY COMPANIES

9. Distinguish between: Holding & Subsidiary Companies [Dec. 2010 (4 Marks)]

Ans.: Holding and Subsidiary companies are relative terms. A company is a holding company of another if the other is its subsidiary.

Holding Company [Section 2(46)]: Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Subsidiary Company [Section 2(87)]: Subsidiary company in relation to any other company (that is to say the holding company), means a company in which the holding company –

(a) *Controls the composition* of the Board of Directors or

(b) Exercises or controls more than *50% of the total voting power* either at its own or together with one or more of its subsidiary companies.

However, prescribed class or classes of holding companies shall not have layers of subsidiaries beyond the prescribed limit.

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

10. The paid-up share capital of PKA India Pvt. Ltd. is ₹ 20 Crore, consisting of 150 lakh fully paid-up Equity Shares of ₹ 10 each and 50 lakh fully paid-up Cumulative Preference shares of ₹ 10 each. PKA India Capital Pvt. Ltd. and PKA Tele Services Pvt. Ltd. are holding 55 lakh and 25 lakh Equity Shares respectively in PKA India Pvt. Ltd.

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PKA India Capital Ltd. and PKA India Tele Services Pvt. Ltd. are subsidiaries of Lord Krishna Pvt. Ltd.

(1) Referring to the provisions of the Companies Act, 2013 examine whether PKA India Pvt. Ltd. is a subsidiary of Lord Krishna Pvt. Ltd.?

(2) Would your answer be different if Lord Krishna Pvt. Ltd. has five out of total seven directors on the Board of Directors of PKA India Pvt. Ltd.? [June 2019 (5 Marks)]

Ans.: (1) Holding and Subsidiary companies are relative terms. A company is a holding company of another if the other is its subsidiary.

Holding Company [Section 2(46)]: Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Subsidiary Company [Section 2(87)]: Subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company –

(*i*) Controls the composition of the Board of Directors or

(*ii*) Exercises or controls more than 50% of the total voting power either at its own or together with one or more of its subsidiary companies.

Total Voting Power [Section 2(89)]: Total voting power in relation to any matter means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

The total equity share capital of PKA India Pvt. Ltd. is ₹ 1500 Lakh and in absence of any specific condition in the problem, it may be presumed that the all equity share of PKA India Pvt. Ltd. is carrying equal voting rights.

The PKA India Capital Pvt. Ltd. holds ₹ 550 Lakh in PKA India Pvt. Ltd. and PKA India Tele Services Pvt. Ltd. holds ₹ 250 Lakh in PKA India Pvt. Ltd. and PKA India Capital Pvt. Ltd. and PKA India Tele Services Pvt. Ltd. both are subsidiaries of Lord Krishna Ltd.

From the above, it is clear that PKA India Capital Pvt. and PKA India Tele Services Pvt. Ltd. collectively holds 800 lakh equity share capital in PKA India Pvt. Ltd, and both of them are subsidiaries of Lord Krishna Ltd.

Thus, in view of Section 2(87)(*ii*) of the Companies Act, 2013, it can be said that Lord Krishna Ltd. exercises or controls more than half of the total voting power in PKA India Pvt. Ltd together its subsidiaries *viz.* PKA India Capital Pvt. Ltd. & PKA India Tele Services Pvt. Ltd. Accordingly, PKA India Pvt. Ltd shall become an indirect subsidiary of Lord Krishna Ltd.

(2) If Lord Krishna Ltd would have right to appoint 5 directors out of total 7 directors in PKA India Pvt. Ltd. then PKA India Pvt. Ltd., becomes direct subsidiary of Lord Krishna Ltd., through controlling the composition of Board of Directors.

11. Reliable Ltd. holds 75% of the paid-up share capital in Trust Ltd. Board of Directors of Trust Ltd. decides and resolves to hold 10% of the paid-up share capital in Reliable Ltd. The Board's proposal was also approved by Trust Ltd.

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in its general meeting. However, certain members of Trust Ltd. objected to the decision on the ground that both the Board's proposal and the resolution of the general meeting are in violation of the provisions of the Companies Act, 2013. Examine. [Dec. 2009 (4 Marks)], [Dec. 2015 (4 Marks)]

Ans.: Subsidiary company not to hold shares in its holding company [Section 19]: Subsidiary company shall not either by itself or through its nominees hold shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Exceptions: In following circumstances, a subsidiary can hold the shares of its holding company:

- Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company.
- Where the subsidiary company holds such shares as a trustee.
- Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

However, the subsidiary company referred above shall have voting right only in respect of the shares held by it as a legal representative or as a trustee.

Thus, no company shall hold any interest in its holding company subject exceptions as stated above.

Considering the above provisions, resolution passed by the Trust Ltd. to hold 10% shares of their holding company i.e. *Reliable Ltd. is not valid.*

12. ABC Ltd. holds 75% equity share capital of DEF Ltd. and controls composition of Board of Directors of DEF Ltd. ABC Ltd. goes for public issue for raising further share capital. Board of Directors of ABC Ltd. allot 10% of the issue to DEF Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of Board's decision to allot 10% of issue to DEF Ltd. DEF Ltd. holds certain number of shares as a legal representative of a deceased member of ABC Ltd. and has a right to vote at a general meeting of ABC Ltd. in respect of such shareholding, will this right be affected by issue of 10% to DEF Ltd. by ABC Ltd.? [Dec. 2017 (4 Marks)]

Ans.: Subsidiary company not to hold shares in its holding company [Section 19]: *Please refer to answer of Question No. 11.*

Keeping in view of above provisions, ABC Ltd. (Holding Company) cannot allot shares to DEF Ltd. (Subsidiary Company) in its public issue. However, DEF Ltd. can continue to hold its shares already held as legal representative of a deceased member of the holding company. It can also exercise its voting rights in relation to such shares.

PRIVATE COMPANIES

13. A private company incorporated under the Companies Act, 2013 may issue debentures to any number of persons and can accept deposit from the public. Comment. [Dec. 2017 (5 Marks)]

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Ans.: ***Issue of debentures by private company:***

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

As per Section 2(*81*), 'Securities' mean the securities as defined in Section 2(*h*) of the Securities Contracts (Regulation) Act, 1956.

As per Section 2(*h*) of the Securities Contracts (Regulation) Act, 1956, "Securities" include debentures, debenture stock or other marketable securities of a like nature.

However, under Section 42(*2*), A private placement shall be made only to a select group of persons who have been identified by the Board (*referred to as "identified persons"*), whose number shall not exceed 50 or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of section 62(*1*)(*b*)], in a financial year subject to such conditions as may be prescribed.

As per Rule 14(2) Companies (Prospectus & Allotment of Securities) Rules,2014, for the purpose of Section 42(*2*), an offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in the aggregate in a financial year. However, any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of section 62(*1*)(*b*) shall not be considered while calculating the limit of 200 persons.

Thus, a private company cannot make public issue of debentures. However, it may issue debentures on private placement basis subject to compliance to above stated provisions.

Acceptance of deposits by private company:

As per Sections 73 and 76 of the Companies Act, 2013 read with the Companies (Acceptance of Deposits) Rules, 2014, only public company can accept deposits from public.

A Private Company cannot accept deposits from public. However, private company can accept deposits from its members subject to prescribed conditions.

Ceiling for acceptance of deposits by private company: A Specified IFSC Public company and a private company may accept from its members monies not exceeding **100% of aggregate of the paid-up share capital, free reserves and securities premium account** and such company shall file the details of monies so accepted to the Registrar in **Form DPT-3**.

It also provided that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies:

(*i*) A private company which is a startup, for 10 years from the date of its incorporation.

(*ii*) A private company which fulfils all of the following conditions:

(*a*) Which is not an associate or a subsidiary company of any other company.

(*b*) The borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or ₹ 50 Crore, *whichever is less*.

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(*c*) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73.

14. Bindu Mediatech Private Ltd. is having paid-up capital of ₹ 40 lakh, its Securities Premium Account is ₹ 30 lakh and its free reserves are ₹ 30 lakh. The company has accepted ₹ 95 lakh as loans from its members and term loan from a scheduled bank to the extent of ₹ 75 lakh. State whether the company can accept loans/deposits from its members. Is there any maximum limit up to which the company can accept as loan/deposit from its members? Discuss the applicability of exemptions to the Private Ltd. Company from some of the provisions of Section 73 of the Companies Act, 2013. (*Assume the Company has not made any defaults in loan repayments*) [Dec. 2019 (5 Marks)]

Ans.: (1) The Company has accepted a term loan from a scheduled bank of ₹ 75 lakh. However, under Rule 2(1)(*c*) of Companies (Acceptance of Deposits) Rules, 2014, it is an exempted deposit.

(2) MCA has provided certain exemptions to private limited companies for accepting loans/deposits from its members. Accordingly, clause (*a*) to (*e*) of Section 73(2) of the Companies Act, 2013 shall not apply to the following private companies:

(*i*) Which accept money not exceeding 100% of the paid-up capital and free reserves and securities premium.

(*ii*) Start-up company for 5 years from its incorporation.

(*iii*) A private company which fulfils the following conditions:

(*a*) It is not an associate or a subsidiary of any other company.

(*b*) The borrowing of such company is less than twice of its paid-up share capital or ₹ 50 Crore, *whichever is less*.

(*c*) It has not defaulted in repayment of borrowings subsisting at the time of accepting of deposits.

The company referred to in clause (*i*), (*ii*) or (*iii*) above shall file the details of monies accepted to the registrar in such manner as may be specified.

(3) In this case, Bindu Mediatech Private Ltd., is having a paid-up share capital of ₹ 40 lakh, Free Reserves of ₹ 30 lakh and Securities Premium of ₹ 30 lakh.

The company can accept loans up to ₹ 100 lakh.

Since the company has already accepted ₹ 95 lakh as loans from its members it can further accept ₹ 5 lakh from its members as loan/deposits.

PUBLIC COMPANIES

15. Distinction between: Public Company & Private Company

Ans.: Following are the main points of distinction between public and private company:

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Points	Public Company	Private Company
Meaning	The minimum number of persons required to form a public company is **7** and **no restriction on maximum** number of members.	The minimum requirement is only of **2 persons** and the maximum limit is of **200 persons**.
No. of directors	It must have at least **3 directors**.	It must have at least **2 directors**.
Subscription for shares & debenture	A public company can invite the general public to subscribe the shares or debentures of the company.	A private company is prohibited by its Articles to subscribe the shares or debentures of the company.
Transfer of shares	Shares of public companies are freely transferable.	In a private company, transferability of shares is restricted by Articles.
Special privileges	There are no special privileges enjoyed by a public company.	A private company enjoys some special privileges under the Companies Act, 2013.
Managerial remuneration	In case of public company total managerial remuneration cannot exceed 11% of the net profits.	In case of private company, no such restriction on remuneration applies.

16. Masons Pvt. Ltd. is a private limited company as per the Article of Association of the company. However, a public company acquired shares in Masons Pvt. Ltd. thereby making the Masons Pvt. Ltd., a subsidiary of that public company. State the impact of such acquisition of shares by the public company on Masons Pvt. Ltd. [June 2015 (4 Marks)]

Ans.: As per Section 2(*71*) of the Companies Act, 2013, Public Company means a company which –

(*a*) is not a private company and

(*b*) has a minimum paid-up share capital as may be prescribed.

However, a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles. *This means, if private company is subsidiary of public company then it will be treated as public company.*

Thus, if a public company acquires shares in Masons Pvt. Ltd making it subsidiary of that public company, the Masons Pvt. Ltd will be treated as public company under the Companies Act, 2013 even though Masons Pvt. Ltd continues to be a private company in its articles.

ONE PERSON COMPANY [OPC]

17. One person company shall be formed only as a company limited by shares. Comment. [June 2015 (5 Marks)]

Ans.: One Person Company [Section 2(*62*)]: One Person Company means a company which has only one person as a member.

One Person Company has to be formed as a private company. **[Section 3(*1*)(*c*)]**

Type of OPC [Section 3(*2*)]: An OPC may be formed either as:

- Company limited by shares
- Company limited by guarantee
- Unlimited liability company.

Thus, it is incorrect to say that one person company shall be formed only as a company limited by shares.

18. Axar is in plant research and he has invented a process for extracting bio-fuel from certain plants, now he is proposing to commercialize his invention by promoting a One Person Company (OPC). But he proposes his name and his wife name as directors of the Company. As a Company Secretary clarify Axar on number of shareholders and directors OPC can have. Also brief him the provisions on Board, Annual General Meeting, signing of financial statements, Board's Report and Annual Return. [Dec. 2019 (5 Marks)]

Ans.: Following are the provisions of the Companies Act, 2013 relating One Person Company:

(*a*) **One Person Company:** As per Section 2(*62*), One Person Company means a company which has only one person as a member.

(*b*) **Eligibility to incorporate OPC:** A natural person who is an Indian citizen and resident in India shall be eligible to incorporate a One Person Company (OPC).

(*c*) **Directors in OPC:** As per section 149(*1*), One Person Company may have more than one director on its Board. But OPC should have only one member. *Hence, Axar may incorporate an OPC and he and his wife may be the directors of the company.*

(*d*) **Meeting of Board of Directors of OPC:** As per section 173(*5*), it is required to hold at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings should not be less than 90 days.

For OPC having only one director, the provisions of Section 173 [*Meetings of the Board*] and Section 174 [*Quorum for meeting of Board*] will not apply.

(*e*) **No AGM for OPC:** As per Section 96(*1*), OPC need not hold annual general meeting.

(*f*) **Annual return of OPC:** As per section 92(*1*), the annual return shall be signed by the Company Secretary, or where there is no Company Secretary, by the director of company.

(*g*) **Signing of financial statement & Board's Report:** As per Section 134(*1*), financial statement and Board's Report can be signed only by one director.

19. 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?

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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.

(I) Shyam is son of Vinod, who is 15 years old as on 10th May, 2022.

(II) Ashok, an Indian Citizen residing in India who is presently a member of a One Person Company. [June 2022 (4 Marks)]

Ans.: Relevant provisions of the Rules 3 & 4 of the Companies (Incorporation) Rules, 2014 in relation to given case are as follows:

Nominee: Only a natural person who is an Indian citizen and resident in India shall be a nominee for the sole member of OPC. For this purpose "Resident in India" means a person who has stayed in India for a period of not less than **120 days** during the immediately preceding financial year.

A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company.

No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.

Consent of nominee: The subscriber to the memorandum of OPC shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.

Withdraw of consent by nominee: The person nominated by the subscriber or member of OPC may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company. However the sole member shall nominate another person as nominee within 15 days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in **Form INC-3**.

Filing with ROC: The company shall within 30 days of receipt of the notice of withdrawal of consent file with the ROC, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in **Form INC-4** and the written consent of such another person so nominated in **Form INC-3**.

Considering the above provisions answer to given case is as follows:

(I) Shyam, who is minor, cannot be appointed as nominee.

(II) Ashok cannot be appointed as nominee as a natural person shall not be member or nominee of more than a One Person Company.

20. Raman is an Indian Citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Sanjay, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Raman eligible to incorporate a One-Person Company (OPC)? If yes, can he give the name of Sanjay in the Memorandum of Association as his nominee? Justify your answers with relevant provisions of the Companies Act, 2013. [Dec. 2022 (5 Marks)]

Ans.: As per Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen and whether resident in India or otherwise –

(*a*) shall be eligible to incorporate a One Person Company;

(*b*) shall be a nominee for the sole member of a One Person Company.

For this purpose "Resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year.

Considering the above provisions, answer to given case is as follows:

(*i*) Raman is an Indian Citizen and resident in India as his stay during the immediately preceding financial year is more than 120 days. He is eligible to incorporate One Person Company in India.

(*ii*) Sanjay is a foreign citizen and hence he cannot be appointed as nominee in One Person Company even though his stay in India is more than 120 days.

SECTION 8 COMPANIES

21. State any eight exemptions available to 'Section 8 Companies' from the provisions of the Companies Act, 2013.

Ans.: The Central Government has granted various exemptions, either in full or in part from the provisions of the Companies Act, 2013. The key exemptions are summarized below:

- **Company Secretaries no longer mandatory:** Section 8 Company can appoint Company Secretary who does not fall in the definition of Company Secretary under section 2(*24*). A Company Secretary has been defined to mean a member of the Institute of Company Secretaries of India (ICSI). However with this exemption, a Section 8 company can appoint any person as Company Secretary even if that person is not a member of ICSI.
- **No need for minimum share capital:** A Section 8 Company need not have minimum paid-up share capital as prescribed under section 2(*68*) and 2(*71*) for a private and a public company respectively. Thus, section 8 companies are free to have any share capital.
- **Relaxation with regard to AGM:** The time, date and place of each AGM can be decided before hand by the Board of directors, subject to directions, if any, given in the general meeting.
- **Shorter notice period for AGM:** A Section 8 company can call a general meeting by giving clear **14 days** notice. In case of other companies AGM can be called only by giving a notice calling such an AGM after 21 clear days.
- **No necessity to record minutes of meetings, unless required etc.:** A Section 8 Company need not comply with the requirements stipulated under section 118 dealing with Minutes of Proceedings of general meetings, meeting of Board of Directors and other meeting and resolutions passed by postal ballot. However, the minutes of meetings may be recorded within 30 days of conclusion of the meeting in cases where the company's articles provide for confirmation by way of circulation of minutes.

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- **Shorter period for sending financial statements:** A Section 8 Company can send a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting to its members not less than 14 days before the date of the meeting.
- **Maximum number of directors:** A Section 8 Company need not comply with the requirement of maximum number of directors as stipulated under section 149(*1*). Thus, such companies can appoint more than 15 directors on its board without complying provisions of Section 149.
- **Independent Directors not required:** A Section 8 Company need not appoint independent directors.
- **Consent to act as director not required:** A section 8 company need not obtain consent letter from directors and file the same with ROC within 30 days of appointment as required under section 152(5).
- **Provisions relating to contesting as director shall not apply:** A Section 8 Company need not comply with requirements of Section 160 with respect to notice of candidature for appointment of a director other than a retiring director if the Articles of association of such company provide for election of directors by ballot.

22. 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. [Dec. 2021 (4 Marks)]

Ans.: (*a*) Minimum paid-up capital: 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.

(*b*) Firm as a member of Section 8 Company: Partnership Firm cannot become member of the company. However, Section 8(*3*) of the Companies Act, 2013 provides that a Partnership Firm can be member of the Section 8 Company.

(*c*) Dividend: According to Section 8(*1*)(*c*) of the Companies Act, 2013, Section 8 Company has been prohibited from the payment of dividends to its members. Thus, Section 8 Company cannot pay dividend to its members

(*d*) Appointment of Company Secretary: 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 5, 2015.

23. 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. [June 2022 (5 Marks)]

Ans.: Section 8 of the Companies Act, 2013 provides that a person or an association of persons can be registered as a limited company for the objects of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, without the addition to its name of the word 'Limited', or the words 'Private Limited'.

Disposal of surplus on winding-up: As per Section 8(9), if on the winding-up or dissolution of a company registered under section 8, there remains, after the satisfaction of its debts and liabilities, any asset –

(*a*) They may be transferred to another company registered under section 8 and having similar objects, subject to such conditions as the Tribunal may impose, or

(*b*) May be sold and proceeds thereof credited to Insolvency & Bankruptcy Fund formed under section 224 of the Insolvency & Bankruptcy Code, 2016.

Thus, Jet Pilots Flying Club can dispose surplus assets as stated above. The club will not be allowed to distribute the surplus assets amongst the members.

24. Wonkar Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting Gilli Danda by arranging introductory courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. A, a member decided to make a complaint with Regulatory Authority to club the fraudulent activities by cancelling the license given to the company.

(*i*) Is there any provision under the Companies Act, 2013 to revoke the license? If so, state the provisions.

(*ii*) Whether the Wonkar Club can be merged with Stick Private Limited a company engaged in the business of Networking?

[Dec. 2022 (2 + 2 = 4 Marks)]

Ans.: Section 8 of the Companies Act, 2013 provides that a person or an association of persons can be registered as a limited company for the objects of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, without the addition to its name of the word 'Limited', or the words 'Private Limited'.

Application of profits: Section 8 Company shall apply its profits or other income in promoting its objects. Such companies are prohibited with regard to payment of any dividend to its members.

Revocation of licence: The Central Government [*Regional Director*] may, by order, revoke the licence granted to a company registered under section 8 in following cases:

- If the company contravenes any of the requirements or any of the conditions subject to which a licence is issued.
- The affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest

The Central Government [*Regional Director*] may direct the company to convert its status and change its name to add the word 'Limited' or the words 'Private Limited', as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may, on application, in the prescribed form, register the company accordingly.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard. A copy of every such order shall be given to the Registrar.

Amalgamation: Section 8 Company shall amalgamate only with another Section 8 Company and having similar objects.

Considering above provisions, answer to given case is as follows:

(*i*) If Wonkar Club, company registered under section 8, pays dividend to its shareholders then its licence can be revoked as per the provisions stated above.

(*ii*) Wonkar Club cannot be merged with Stick Private Limited a company engaged in the business of Networking.

PRODUCER COMPANIES

25. Explain the concept of Producer Company.

Ans.: Producer Company [Section 378A(*l*)]: Producer Company means a body corporate having objects or activities specified in Section 378B and registered as Producer Company under the Companies Act, 2013 or under the Companies Act, 1956.

The objectives for which producer companies may be formed are laid down in **Section 378B.**

Every producer company shall deal primarily with the produce of its active members for carrying out any of its specified objects. This means there is an obligation on the producer company to deal primarily with the active members in conducting its activities.

26. Directors of ABC Ltd. want to incorporate a producer company. ABC Ltd. itself is in the production and harvesting business. You are the company secretary of ABC Ltd. You are requested to advise the Board of ABC Ltd. about incorporation of such a producer company and set out its objectives as per relevant provisions of the Companies Act. [Dec. 2017(8 Marks)]

Ans.: Objects of Producer Company [Section 378B]: The objects of the Producer Company shall relate to all or any of the following matters:

(*a*) Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit. However, the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution.

(*b*) Processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members.

(*c*) Manufacture, sale or supply of machinery, equipment or consumables mainly to its Members.

(*d*) Providing education on the mutual assistance principles to its Members and others.

(*e*) Rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members.

(*f*) Generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation and communications relatable to primary produce.

(*g*) Insurance of producers or their primary produce.

(*h*) Promoting techniques of mutuality and mutual assistance.

(*i*) Welfare measures or facilities for the benefit of Members as may be decided by the Board.

(*j*) Any other activity, ancillary or incidental to any of the activities referred to in clauses (*a*) to (*i*) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner.

(*k*) Financing of procurement, processing, marketing or other activities specified in clauses (*a*) to (*j*) which include extending of credit facilities or any other financial services to its Members.

Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

27. Distinguish between: Limited Liability Partnership & Producer Company [Dec. 2010 (4 Marks)]

Ans.: Following are the main points of distinction between LLP and Producer Company:

Points	Limited Liability Partnership	Producer Company
Meaning	Limited liability partnership means a partnership formed and registered under Limited Liability Partnership Act, 2008.	A producer company means a body corporate, having objects or activities specified in Section 581B of the Companies Act, 1956 and registered as producer company.
Governing law	Limited liability partnerships are governed by the Limited Liability Partnership Act, 2008.	Producer Companies are governed by the Companies Act, 2013.
Internal rules & regulation	Internal rules and regulation of LLP's are governed by the LLP agreement.	Internal rules and regulation of the producer companies are governed by the MOA & AOA.

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Points	Limited Liability Partnership	Producer Company
Meetings	In the LLP Act, there is no stipulation for meeting of partners either periodically or compulsory at the year end.	Every producer company must hold AGM every year. A meeting of the board shall be held not less than once in every 3 months and at least 4 board meetings shall be held in every year
Business	In an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.	In case of a producer company no individual director can conduct the business of the company.
Remuneration	There are no provisions in the LLP Act, 2008 regulating the remuneration payable to designated partners.	The Companies Act, 2013 regulates the remuneration payable to directors.
Borrowing power	There are no restrictions on the borrowing powers on the LLP.	There are restrictions on borrowings power on the producer companies.
Accounts	The LLP can choose to maintain the accounts on cash basis/accrual basis.	Producer companies have to keep their accounts on accrual basis.
Audit	The audit of LLP is not compulsory if the capital contributed does not exceed ₹ 25 lakh or if the turnover does not exceed ₹ 40 lakh.	Audit of a producer company is compulsory.
Company Secretary	The appointment of Company Secretary is not provided in the LLP Act, 2008.	Every producer company having an average annual turnover exceeding ₹ 5 Crore in each of 3 consecutive financial years shall have a whole-time Company Secretary.

28. 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. [June 2022 (4 Marks)]

Ans.: Investment of general reserves: As per Rule 5 of 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:

(*a*) In approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank.

(*b*) In a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank.

(*c*) With any other scheduled bank.

(*d*) In any of the securities specified in section 20 of the Indian Trusts Act,

(*e*) In the shares or securities of any other inter-State co-operative society or any co-operative society.

(*f*) In the shares, securities or assets of public financial institutions specified in Section 2(72) of the Companies Act, 2013.

Thus, the objection of Company Secretary is valid, the producer company can invest its surplus funds as mentioned above only.

GOVERNMENT COMPANIES

29. ABC Ltd. is a company incorporated under the Companies Act, 2013. The paid-up share capital of the company is held as under:

- **Government of India 20%**
- **Government of Andhra Pradesh 20%**
- **Government of Tamil Nadu 10%**
- **Government of Maharashtra 10%**

Explaining the provisions of the Companies Act, 2013, state whether the said company be called a 'Government company' and also state whether the employees of a Government company can claim their salaries from the Government of India. [Dec. 2015 (4 Marks)]

Ans.:

(1) **Government Company [Section 2(45)]:** Government company means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

As per the facts given in case, more than 51% capital is held in ABC Ltd. by the Central Government and State Governments; hence it is a government company.

(2) **Can employees of Government Company claim salaries from Government of India:** Employees of government companies are not government servants, they have no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scales should be met by the Government. It is the responsibility of the company to pay them the salaries. [*A.K. Bindal* v. *Union of India*]

30. 43% of the paid-up share capital of V4C Ltd. is held by the Central Government and 8% is held by the Life Insurance Corporation of India and Unit Trust of India (Public Institutions). Analyze the definition of 'Government Company' under the provisions of the Companies Act, 2013 and decide whether V4C Ltd. is a Government Company. [Dec. 2018 (5 Marks)]

Ans.: Government Company [Section 2(45)]: Government company means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

Thus, in determining whether a company is Government Company or not the holding by Central and State Government has to be considered and the shares held by public institution has to be ignored.

Accordingly, V4C Ltd. cannot be treated as Government Company.

MEMORANDUM OF ASSOCIATION

31. Write a short note on: Liability clause in Memorandum of Association [Dec. 2018 (4 Marks)]

Ans.: Liability clause states the nature of liability that the members of the company incur, whether the liability shall be limited by shares or by guarantee or unlimited.

Liability of members [Section 4(1)(d)]: The liability of members of the company is as follows:

(*a*) **Company limited by shares:** Liability of its members is limited to the amount unpaid on the shares held by them.

(*b*) **Company limited by guarantee:** Liability of its members limited by its MOA to such amount as the member may respectively undertake to contribute to the assets of the company in the event of its winding-up.

32. The name of the every company must end with the word 'Limited'. Comment. [Dec. 2012 (5 Marks)]

Ans.: The memorandum of a company shall state the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company.

However, Section 8 companies are not required to state at the end of their name words 'Ltd.' or 'Private Ltd.'

Similarly, in case of government companies the name of the company need not be ended with the words "Ltd." or "Private Ltd.". This is as per the exemptions to Government Companies under section 462 of Companies Act, 2013 *vide* notification dated June 5, 2015.

33. Can employee have right to object in case of shifting of registered office from one state to another? Decide with case law. [June 2013 (4 Marks)]

Ans.: It was held that employees union, which was a registered body, would have the legal standing to appear before the Court and oppose the application on the ground

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that their interests would be likely to be prejudicially affected if the resolution for shifting the registered office of the company from one state to another is confirmed by the Court.

However, the employees union cannot oppose on the ground that there would be loss of revenue or unemployment in the State or that the meeting at which the special resolution was passed was not itself valid.

A different dimension to the employee's right can be seen in the case of *Kwality Ice Creams (India) Pvt. Ltd.* In this case, the company's petition for carrying its registered office from West Bengal to Delhi was opposed by two employees of the head office on the ground that their action against the company would be prejudiced. The CLB [*now NCLT*] said that the facility for litigation is not a valid ground to stall shifting. There was no restraint order from any Court against the proposed shifting. The CLB allowed shifting subject to the condition that the interest of none of the employees at the registered office would be prejudiced by retrenchment or otherwise.

34. Abha Ltd. was incorporated on 15th March, 2012. A company with identical name and similar objects was incorporated on 5th August, 2013. On account of similarity of name, Abha Ltd., i.e., the company which was previously registered, filed a petition on 15th April, 2014 with the Central Government seeking issue of direction for change of name by the later company so that its business interest is protected. On 16th August, 2014, the Central Government sent an order to the later company to change its name. Examine the aforesaid case and the validity of the order of the Central Government.
[Dec. 2014 (4 Marks)]

Ans.: According to the Section 16(*1*)(*a*), if by inadvertence or otherwise a name has been registered which is identical to or too nearly resembles the name of an existing company, the Central Government may direct the company to change its name. The company shall change its name within a period of **3 months** from the issue of the above direction after passing an **ordinary resolution**.

Thus, Abha Ltd. (first registered company) can make an application to Central Government to direct second company to change its name. Second company shall change its name within a period of **3 months** from the issue of the above direction by passing an **ordinary resolution**.

35. Garg Builders Private Ltd. has changed its name. There is no alteration in the constitution or legal status of the company. The fact of alteration of name was not brought to the Tribunal. Has the company got a right to execute a decree in its new name after change of name?
[Dec. 2017 (5 Marks)], [Dec. 2022 (3 Marks)]

Ans.: Effect of change in name of the company: The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company in its former name may be continued by or against the company in its new name.

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Important case laws:

- Where a company changes its name and the new name has been registered by the ROC, the commencing of legal proceedings in the former name is not valid. [*Malhati Tea Syndicate Ltd.* v. *Revenue Officer*]
- In spite of a change in name the entity of the company continues. The company is not dissolved nor does any new company come into existence. If any legal proceeding is commenced, after change in the name, against the company in its old name, the company should be treated as if it is not in existence. It is not an incurable defect and the plaint can be amended to substitute the new name. [*Pioneer Protective Glass Fibre (P) Ltd.* v. *Fibre Glass Pilkington Ltd.*]
- Courts have held that proceedings commenced by the company in its former name can be continued under its new name. [*Solvex Oils and Fertilizers* v. *Bhandari Cross-Fields*]
- By change of name, the constitution of the company is not changed, only the name changes. It is not similar to the reconstitution of a partnership which means creation of a new legal entity altogether. [*Economic Investment Corporation Ltd.* v. *CIT (WB)*]
- If a company has power to execute a decree in its old name, it has right to execute the decree in its new name, even if fact of change of name was not brought to notice of court. [*D Srinivasaiah* v. *Vellore Varulakshmi Bank*]

Thus, Garg Builders Private Ltd. a right to execute a decree in its new name after change of name

36. State any six powers which are prudent to be included in the objects clause of Memorandum of Association of a company as general and ancillary objects. [Dec. 2018 (4 Marks)]

Ans.: Object Clause should indicate objects for which the company is proposed to be incorporated and any matter considered necessary for furtherance of thereof.

A company can undertake only those objects which are specified in the 'Object Clause'.

Acts beyond object clause are void: Any act not specified in 'object clause' is *ultra vires* the company and is void.

Incidental Powers: As a general principle, a company has powers to do all that is necessary to attain the main object *e.g.* a company must be able to employ people, purchase or take on rent premises, borrow money, acquire machinery etc. These are 'implied powers' and need not be specified in Memorandum.

Statutory powers need not be mentioned in object clause: Powers given by statute need not be mentioned in Memorandum *e.g.* power to amalgamate is statutory power. Company can amalgamate even if this power is not specified in Memorandum in object clause.

'Implied' powers of the company and powers which are not 'implied': 'Implied powers' need not be specified in Memorandum. However, there are certain powers which cannot be taken as 'implied'. These should be specified in memorandum as 'matter necessary for furtherance of objects' (ancillary or incidental powers). These should be such that is should arise out of or directly connected to the main activity.

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Generally, following powers are not treated as 'implied' and hence it is prudent to include such powers specifically in the Memorandum –

1. Acquire any business similar to business of the company.
2. Entering into agreement with others for joint ventures, partnership or sharing profits or other arrangements.
3. Taking shares in other companies having similar objects.
4. Taking shares in other companies where such investment amounts to doing indirectly that which is not permitted under the object clause.
5. Promoting other companies and helping them financially.
6. Power to use funds for political purpose.
7. Power to give gifts, make donations or contributions to charities.
8. Entering into contracts of suretyship or guarantee.

37. X, an employee of BG Ltd., is aggrieved by the decision of shifting of the registered office of the Company from the State of Uttar Pradesh to Haryana. He has filed Public Interest Litigation (PIL) regarding the same, considering that the business of the company will be severely affected by the said decision of shifting of registered office. In the light of decided case laws, examine the strength of argument raised in the PIL. [Dec. 2019 (4 Marks)]

Ans.: The facts are similar to the case of Bharat Commerce & Industries Ltd., where it was held that employees' union, which was a registered body and which represented quite a number of the employees at the registered office of the company, would have the legal standing to appear before the court and oppose the application on the ground that their interests are likely to be prejudicially affected if the resolution for shifting the registered office of the company from one State to another is confirmed by the court.

However it was held that the employees' union cannot oppose on the ground that there would be loss of revenue or unemployment in the State or that the meeting at which the special resolution was passed was itself not valid.

Thus, the argument of X is not tenable and the Public Interest Litigation regarding shifting of registered office is not tenable as interest of none of the employee at the registered office is prejudiced affected by retrenchment or otherwise.

ARTICLE OF ASSOCIATION

38. Distinguish between: Memorandum of Association & Articles of Association

Ans.: Following are the main points of distinction between MOA & AOA:

Points	Memorandum of Association	Articles of Association
Meaning	MOA is the charter of the company and defines the fundamental conditions and objects for which the company is granted incorporation.	AOA are the rules and regulations framed to govern the internal management of the company.

Points	Memorandum of Association	Articles of Association
Scope	MOA cannot include any clause contrary to the provisions of the Companies Act.	The AOA are subsidiary both to the Companies Act and the MOA.
Relation	The MOA generally defines the relation between the company and the outsiders.	The AOA regulate the relationship between the company and its members and between the members *inter se*.
Alteration	Clauses of the memorandum cannot be easily altered. They can only be altered in accordance with the mode prescribed by the Act. In some of the cases, alteration requires the permission of the Central Government or the Tribunal.	In the case of AOA, members have a right to alter the articles by a special resolution. Generally there is no need to obtain the permission of the Tribunal or the Central Government for alteration of the articles.
Ratification	Acts done by a company beyond the scope of the MOA are absolutely void and *ultra vires* and cannot be ratified even by unanimous vote of all the shareholders.	The acts of the directors beyond the articles can be ratified by the shareholders.

39. Alteration of Capital Clause in Memorandum of Association is a precondition to restructuring the Capital structure of the Company' – Elaborate the statement mentioning relevant provisions of the Companies Act, 2013 on types of alterations of Capital Clause. [Dec. 2019 (4 Marks)]

Ans.: Section 61(*1*) of the Companies Act, 2013 provides for alteration of capital clause of a company.

A company limited by shares or guarantee and having a share capital may, if so authorized by its articles, alter by an **ordinary resolution**, its memorandum in the following ways:

(*a*) It may increase the authorized share capital by such amount as it thinks expedient.

(*b*) It may consolidate and divide, all or any of its existing shares into a larger denomination than of its existing shares *e.g.*, by consolidating 10 shares of ₹ 10 each into one share of ₹ 100 each. No consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

(*c*) It may convert all or any of its fully paid-up shares into stock or reconvert that stock into fully paid-up shares of any denomination.

(*d*) It may sub-divide its existing shares or any of them into smaller denomination than fixed by its Memorandum but it must keep the existing proportion between the paid-up and unpaid amount *e.g.*, one share of ₹ 100 each, ₹ 60 paid-up and be sub-divided into ten shares of ₹ 10 each, ₹ 5 paid-up per share.

(*e*) It may cancel shares which have not been taken up or agreed to be taken by any person and diminish the amount of the share capital by the amount

of the shares so cancelled. However, such cancellation of shares does not amount to reduction of share capital.

All the above alterations do not require the confirmation by the Tribunal except that alteration relating to consolidation and division which results in changes in the voting percentage of shareholders shall not take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

Notice to be given to ROC for alteration of share capital [Section 64(1)]: When company alters its share capital as per Section 61, the company shall file a notice in **Form SH-7** to the ROC within **30 days** of alteration along with an altered memorandum.

Hence, according to Section 61 (1) of the Companies Act, 2013, alteration of memorandum of association is a precursor to the change in capital structure of the company.

40. A company has a statutory right to alter its articles of association. [June 2010 (5 Marks)]

Ans.: Alternation of Articles [Section 14]: Subject to the provisions of the Companies Act, 2013 and the conditions contained in its Memorandum, a company may alter its Articles by passing a **special resolution.**

Every alteration of the Articles shall be filed with the ROC, together with a printed copy of the altered articles, within a period of 15 days who shall register the same. **[Section 14(2)]**

Any alteration of the Articles shall subject to the provisions of the Companies Act, 2013 be valid as if it were originally in the Articles. **[Section 14(3)]**

Limitation on alternation of articles: The right to alter the Articles is so important that a company cannot alter it any manner. A company can exercise the power to alter the article subject to certain limitations. These are:

1. Alteration must not exceed the powers given by the memorandum. In the event of conflict between the memorandum and the articles, it is the memorandum that will prevail.
2. Alteration must not be inconsistent with any provisions of the Companies Act, 2013 or any other statute.
3. Articles must not include anything which is illegal or opposed to public policy.
4. Alteration must be *bona fide* for the benefit of the company as a whole.
5. Alteration must not constitute a fraud on the minority by a majority.
6. Articles cannot be altered so as to compel an existing member to take or subscribe for more shares or in any way increase his liability to contribute to the share capital, unless he gives his consent in writing.
7. By effecting alteration in its articles, a company cannot defeat escape from its contractual obligation with any person.
8. Articles cannot be altered so as to have retrospective effects.

41. Alteration of article of association must not constitute a fraud on the minority by a majority. Comment. [June 2013 (5 Marks)]

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Ans.: Subject to the provisions of the Companies Act, 2013 and the conditions contained in its Memorandum, a company may alter its Articles by passing a **special resolution.**

The right to alter the Articles is so important that a company cannot alter it any manner. A company can exercise the power to alter the article subject to certain limitations.

Alteration of article of association must not constitute a fraud on the minority by a majority. If the alteration is not for the benefit of the company as a whole, but for majority of shareholders, then the alteration would be bad.

In other words, an alteration to the Articles must not discriminate between the majority shareholders and the minority shareholders so as to give the former an advantage over the latter.

42. The majority of the shareholders of Kasi Textiles Ltd., passed a special resolution to alter its Articles of Association and gave the directors a power to require any shareholder who is doing competing business with that of company's business to transfer his shares. Swaroop, who is carrying on a competing business, challenged the validity of the alteration. Decide whether Swaroop will succeed in the light of the provisions of the Companies Act, 2013 and decided case law. [June 2019 (5 Marks)]

Ans.: Articles of association of a company are its by-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles play a very important role in the affairs of a company.

The articles regulate the internal management of the affairs of the company by way of defining the powers of its officers and establishing a contract between the company and the members and between the members *inter se*. This contract governs the ordinary rights and obligations incidental to membership in the company. But the Articles of Association of a company are not law and do not have the force of law. Any provision of the articles or the memorandum is contrary to any provisions of any law, it will be invalid in *toto*.

Subject to the provisions of the Act and the conditions contained in its memorandum, a company may alter its articles by passing a **special resolution.**

The right to alter the articles is so important that a company cannot alter it any manner.

Alteration of Articles so as to give power to the directors to require any shareholder who competed with the company's business to transfer his shares at full value is valid and binding upon the members of the company as it will be beneficial to and in the interest of the whole company.

43. The memorandum and articles must be read together in the event of any ambiguity. Explain the given statement referring a suitable case law. [Dec. 2021 (4 Marks)]

Ans.: The memorandum and articles must be read together in the event of any ambiguity. In *Angostura Bitters & Co. Ltd.* v. *Kerr*; the Privy Council held, "except in respect of such matters as must be statutorily provided for by the conjunction with the articles, the two documents must be read together at all events so far as may be

necessary to explain any ambiguity appearing in the terms of the memorandum or to supplement it upon any matter as to which it is silent".

The above case was quoted with approval by the Supreme Court in *A. Lakshmanaswami Mudaliar* v. *LIC of India Ltd.*

44. The Articles of Association of DF Ltd. were amended on 1st January 2020 to insert a new Article providing that the service of the employee of the Company shall be terminated if he takes part in active politics. Ravi being one of the employees of DF Ltd. had filed his nomination papers for contesting elections in September, 2019 but the nomination papers were however rejected. Due to taking part in active politics in September, 2019, the services of Ravi were terminated by the Company effective from 1st February 2020. In the light of decided case law, state whether the decision of the Company is legally tenable? [Dec. 2021 (4 Marks)]

Ans.: The Articles of Association cannot be altered so as to have retrospective effects.

Since at the time when Ravi has filed the nomination papers for contesting elections in September, 2019, there was no provision in the Articles of Association of DF Ltd. to terminate the services of the employee of the Company on taking part in active politics.

In the case of *Pyare Lal Sharma* v. *Managing Director, J.K. Industries Ltd.*, it was held that the articles only operate from the date of the amendment. The amended articles of association cannot operate retrospectively, but only from the date of amendment.

Thus, the Company's decision is not legally tenable.

45. The Articles of Association of X Private Limited contains provisions for entrenchment under Section 5 of the Companies Act, 2013. What does an entrenchment provision mean in this context? Also state the relevant provisions of the said Act dealing with entrenchment provisions. [June 2022 (4 Marks)]

Ans.: The Companies Act, 2013 recognizes an interesting concept of entrenchment. The entrenchment provisions allow for certain clauses in the articles to be amended upon satisfaction of greater conditions or restrictions than those prescribed under the Act. (such as obtaining a 100% consent)

This provision acts as a protection to the minority shareholders. This shall 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, by making entrenchment provisions the article 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.

Section 5(4) provides that the provisions for entrenchment 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.

According to Section 5(5), where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed form.

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As per Rule 10 of the Companies (Incorporation) Rule, 2014, where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in **SPICe+** plus **Form INC-32** as the case may be, along with prescribed fee at the time of incorporation of the company.

In case of existing companies, the same shall be filed in **Form MGT-14** within 30 days from the date of entrenchment of the articles, as the case may be, along with prescribed fee.

DOCTRINE OF *ULTRA VIRES*, CONSTRUCTIVE NOTICE, INDOOR MANAGEMENT & *ALTER EGO*

46. With the approval of the Board, an amount of ₹ 50 Crore was spent by Speed Jet Ltd., in producing a commercial film, not covered under its objects clause. The film was a complete flop and the company lost an amount of ₹ 40 Crore. Some of the members of the company objected to such investments not covered by the objects clause of the company. They filed a suit making the directors personally responsible and to make good the loss. Will they succeed? Support your answer with reasons. [Dec. 2009 (6 Marks)]

Ans.: The doctrine of *ultra vires* was first enunciated by the House of Lords in a classic case, *Ashbury Railway Carriage & Iron Co. Ltd.* v. *Riche*.

The general rule is that an act which is *ultra vires* the company is incapable of ratification.

An act which is *ultra vires* is void, and does not bind the company. Neither the company nor the other contracting party can sue on it. The company cannot make it valid, even if every member assents to it.

It is duty 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 foreign to company's memorandum, the director will be personally liable to replace it. In *Jehangir R. Modi* v. *Shamji Ladha*, the Bombay High Court held that a shareholder can maintain an action against the directors to compel them to restore to the company's funds that have by them been employed in transactions that directors have no authority to enter into.

Thus, members of the Speed Jet Ltd. will succeed in their claim making directors personally responsible and to make good the loss.

**47. Write a short note on: Doctrine of *Ultra Vires*
[Dec. 2010 (4 Marks)], [Dec. 2014 (5 Marks)]**

Or

In the case of a company whatever is not stated in the memorandum of association as objects of the company is prohibited by the doctrine of *ultra vires*. Discuss with relevant case law. [June 2014 (8 Marks)]

Ans.: The doctrine of *ultra vires* was first enunciated by the House of Lords in a classic case, *Ashbury Railway Carriage & Iron Co. Ltd.* v. *Riche*.

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The general rule is that an act which is *ultra vires* the company is incapable of ratification. An act which is *intra vires* the company may be ratified by the company in proper form. The rule is meant to protect shareholders and the creditors of the company.

Effects of *ultra vires* transactions:

- **Void *ab initio*:** The *ultra vires* acts are *null* and *void ab initio*. The company is not bound by these acts. Even the company cannot sue or be sued upon. *Ultra vires* contracts are *void ab initio* and hence cannot become *intra vires* by reason of estoppel or ratification.
- **Injunction:** Members can get an injunction to restrain the company wherein *ultra vires* act has been or is about to be undertake.
- **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 foreign to company's memorandum, the director will be personally liable to replace it. [*Jehangir R. Modi* v. *Shamji Ladha*]
- **Property acquired by *ultra vires* acts:** Where a company's money has been used *ultra vires* to acquire some property, the company's right over such property is held secure and the company will be the right party to protect the property. This is because, though the property has been acquired for some *ultra vires* object it represents the money of the company.
- ***Ultra vires* borrowing:** *Ultra vires* borrowing does not create the relationship of creditor and debtor.

48. Distinguish between: Doctrine of constructive notice & Doctrine of indoor management [June 2011 (4 Marks)]

Ans.: Following are the main points of distinction between doctrine of constructive notice & doctrine of indoor management:

Points	Doctrine of Constructive Notice	Doctrine of Indoor Management
Meaning	According to this doctrine, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles.	According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in memorandum and articles have been properly observed.
To whom protects	It protects the company against the outsider.	It protects outsider against the company.
Affairs	It is confined to the external position and affairs of the company.	It is confined to the internal position and affairs of the company.
Reason	The memorandum and articles of association of the company are public documents. They must be registered with the ROC. These are open to public and third parties to access.	The internal affairs need not be registered. They are not open to public and third parties.

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Points	Doctrine of Constructive Notice	Doctrine of Indoor Management
Effect	It operates as an estoppel against the outsider.	It mitigates the effects of the "Doctrine of Constrictive Notice".

49. Write a short note on: Doctrine of Constructive Notice [Dec. 2011 (5 Marks)]

Ans.: The memorandum and articles, when registered, become **public documents** and can be inspected by anyone on payment of nominal fee. Therefore, every person who contemplates entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers have been delegated to the directors, and of any limitations placed upon the exercise of these powers.

In other words, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles. In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning. Consequently, if a person enters into a contract which is beyond the powers of the company, as defined in the memorandum, or outside the limits set on the authority of the directors, he cannot, as a general rule, acquire any rights under the contract against the company.

Example: If the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it is so signed; otherwise he cannot claim under it.

50. While the doctrine of constructive notice seeks to protect the company against the outsider, the doctrine of indoor management operates to protect the outsiders against the company. Elucidate. [June 2012 (8 Marks)], [June 2014 (4 Marks)]

Ans.: 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*, persons contracting with a company are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see that the company carries out its own internal regulations.

In *Royal British Bank* v. *Turquand*, the directors of a banking company were authorized by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorized to borrow. The directors gave a bond to Turquand without the authority of any such resolution. It was held that *Turquand* could sue the company on the strength of the bond, as he was entitled to assume that the necessary resolution had been passed.

Exceptions to the doctrine of indoor management: The doctrine of indoor management is subject to certain exceptions. In other words, relief on the ground of "indoor management" cannot be claimed by an outsider dealing with the company in the following circumstances:

- **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 that

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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.

- **No knowledge of memorandum & articles:** Doctrine of indoor management cannot be invoked in favour of a person who did not consult the memorandum and articles and thus did not rely on them.
- **Forgery:** The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal *ab initio*. In the case of forgery it is not that there is absence of free consent but there is no consent at all. The person whose signatures have been forged is not even aware of the transaction and the question of his consent being free or otherwise does not arise. Consequently, it is not that the title of the person is defective but there is no title at all.
- **Negligence:** The doctrine of indoor management does not reward those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer's authority. If he fails to make an enquiry, he is estopped from relying on the Rule.

51. Write a short note on: Doctrine of *Alter Ego* **[Dec. 2013 (4 Marks)]**

Or

Explain the doctrine of 'ALTER EGO' with suitable case law. **[Dec. 2018 (4 Marks)]**

Ans.: An alter ego is an alternate personality. It is used by the Courts to ignore 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.

The House of Lords has held 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. [*Lennards Carying Co.* v. *Asiatic Petroleum Co.*]

A corporation is considered the alter ego of its stockholders, directors, or officers when it is used merely for the transaction of their personal business for which they want immunity from individual liability.

A parent corporation is the alter ego of a subsidiary corporation if it controls and directs its activities so that it will have limited liability for its wrongful acts.

The alter ego doctrine is also known as the instrumentality rule because the corporation becomes an instrument for the personal advantage of its Parent Corporation, stockholders, directors, or officers. When a Court applies it, the Court is said to pierce the corporate veil.

52. Alok, the Managing Director of Yellow Ltd., borrowed a large sum of money and misappropriated the same. Later, when the lender demanded his money, the company refused to repay, contending that the money borrowed by Managing Director was misappropriated by him and the company is not liable for repayment. Decide, giving reasons, whether the lender would succeed in recovering the money from the company. **[June 2015 (4 Marks)]**

Ans.: The facts of given case are similar to *V.K.R.S.T Firm* v. *Oriental Investment Trust Ltd.*, wherein it was held that under the authority of the company, its managing director borrowed large sums of money and misappropriated it. The company was held liable stating that where the borrowing is within the powers of the company, the lender will not be prejudiced simply because its officer have applied the loan to unauthorized activities provided the lender had no knowledge of the intended misuse.

Thus, lender would succeed in recovering the money from the company.

53. Surprise Ltd. was incorporated under the Companies Act, 2013. The memorandum of association of the company in its objects clause stated that the company was established to make and sell or to carry on the business of mechanical engineers and general contractors. The company entered into a contract with Prominent Ltd., a firm of railway contractors to finance the construction of a railway line in Mumbai. The contract was ratified by the shareholders in general meeting. Subsequently, the contract was repudiated by the company on the ground that the contract was *ultra vires* the objects clause. Prominent Ltd. filed a suit claiming damages for the breach of contract. Explaining the meaning of doctrine of *ultra vires*, decide whether Prominent Ltd. will succeed. [Dec. 2015 (4 Marks)]

Ans.: The general rule is that an act which is *ultra vires* the company is incapable of ratification.

The rule is meant to protect shareholders and the creditors of the company.

The *ultra vires* acts are null and void *ab initio*. The company is not bound by these acts. Even the company cannot sue or be sued upon.

The facts of the given case are similar to *Ashbury Railway Carriage & Iron Co. Ltd.* v. *Riche*, in which doctrine of *ultra vires* was first enunciated by the House of Lords. The House of Lords has held that an *ultra vires* act or contract is void in its inception because the company had not the capacity to make it and since the company lacks the capacity to make such contract, how it can have capacity to ratify it. If the shareholders are permitted to ratify an *ultra vires* act or contract, it will be nothing but permitting them to do the very thing which they are prohibited from doing. The House of Lords has expressed the view that a company incorporated under the Companies Act has power to do only those things which are authorized by its objects clause of its memorandum and anything not so authorized (expressly or impliedly) is *ultra vires* the company and cannot be ratified or made effective even by the unanimous agreement of the members.

Thus, considering views in above case, Surprise Ltd. can repudiate the contract and Prominent Ltd. cannot claim the damages.

54. The paid-up capital of X Ltd. is ₹ 10 Crore and Reserve & 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. [Dec. 2020 (4 Marks)]

Ans.: Restrictions on borrowing power of board of directors: 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.

***Ultra vires* transactions:** 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*, it was held that 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.

In the present case, the Board has taken loan exceeding the prescribed limit under Section 180(1)(*c*) of the Companies Act, 2013 which amount to *ultra vires* transaction and therefore, directors are personally liable to repay the loan to financial institution.

55. 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? [June 2021 (4 Marks)]

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Ans.: 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*, 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 MOA & AOA, 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

56. 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.

[Dec. 2021 (5 Marks)]

Ans.: 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 knows 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.*, the articles of a company empowered the directors to borrow up to £1,000 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 from one of the directors who took debentures. The company refused to pay the amount. It was held that, the debentures were good to the extent of £1,000 only because the director had notice or was deemed to have the notice of the internal irregularity.

In view of above, R will be able to get only ₹ 50 lakh from BC Ltd. He will not be able to get the remaining amount of ₹ 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.

57. Hardev Lal, Director of JKL Limited acted *bona fide* to pursue one of the 'objects' of the Company not falling within the 'Object Clause' of its Memorandum of Association. Subsequently, such fact was noticed through the

contents of the Boards' Report wherein it was reported that such persuasion had resulted in a loss to the Company to the extent of ₹ 25 lakh during the first year itself. The members of the Company disapproved the transaction and required explanation from the Board of Directors. As a Company Secretary, what do you advise the management in this matter and how to fix the responsibility of Hardev Lal. Support your answer with the help of leading case law. [Dec. 2022 (5 Marks)]

Ans.: The doctrine of *ultra vires* was first enunciated by the House of Lords in a classic case, *Ashbury Railway Carriage & Iron Co. Ltd.* v. *Riche*. The general rule is that an act which is *ultra vires* the company is incapable of ratification.

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of *ultra vires*. As a result, an act which is *ultra vires* is void, and does not bind the company. Neither the company nor the contracting party can sue on it. The company cannot make it valid, even if every member assents to it.

The *ultra vires* acts are *null* and *void ab initio*. The company is not bound by these acts. Even the company cannot sue or be sued upon. *Ultra vires* contracts are *void ab initio* and hence cannot become *intra vires* by reason of estoppel or ratification. Members can get an injunction to restrain the company wherein *ultra vires* act has been or is about to be undertake.

In *Jehangir R. Modi* v. *Shamji Ladha*, it was held that – 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 foreign to company's memorandum, the director will be personally liable to replace it.

Thus, Hardev Lal, director of JKL Limited is liable for the loss caused to company as per the doctrine of *ultra vires*.

RESOLUTIONS & NOTICES

58. Ria Technologies Ltd. was incorporated 10 years back. The Board of directors now wants to change its name to Ria Systems Ltd. Draft a notice and the explanatory statement for calling an extraordinary general meeting of the company for change of its name, assuming relevant data. [Dec. 2016 (4 Marks)]

Ans.:

Ria Technologies Ltd.

Registered Office: _____

CIN: _____ Website: _____ E-mail: _____ Tel: _____ Fax: _____

Date _____

NOTICE

NOTICE is hereby given that an Extraordinary General Meeting of the Company will be held at _____ on _____ day the _____ 2016 at _____ to transact the following business:—

1. To consider and, if thought fit, to pass, with or without modifications, the following resolution as an ordinary resolution, in respect of which a special notice has been received by the Company from a member(s) pursuant to Section 139 read with Section 115 of the Companies Act, 2013:

"RESOLVED THAT pursuant to the provisions of Section 4 read with Section 13 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 if any and subject to the approval of the RBI, the name of the Company be changed from Ria Technologies Ltd. to Ria Systems Ltd."

"RESOLVED FURTHER THAT the name Ria Technologies Ltd. wherever it occurs in the Memorandum and Articles of Association of the Company be substituted by the name Ria Systems Ltd."

"RESOLVED FURTHER THAT the Board of directors be and is hereby authorized to do all such acts, deeds and things as may be deemed expedient and necessary to give effect to this resolution."

For Ria Technologies Ltd.

Dated: _____

By order of the Board,

Company Secretary

Notes:

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member.
2. The Explanatory Statement pursuant to Section 102 of the Companies Act, 2013, in respect of special resolution set out above is annexed hereto.

Annexure

Explanatory statement pursuant to Section 102 of the Companies Act, 2013

The present activities of the Company include dealing in hardware and software of computers etc. The present name does not convey the magnitude of operations of the Company and expresses only part of its activities.

For some time the directors have been giving thought to changing the name of the Company. The new name reflects full operations of the Company.

The ROC ..... has confirmed that the new name is available upon the application of the Company for change of the name of the Company and subject to the resolution the Board of directors of the Company proposes to make an application to the ROC for confirmation to the change of name.

None of the Director and KMP and their relatives have any interest in this Resolution except as a member of the Company.

59. Board of Directors of Day Night Prakashani Ltd. decide to shift its registered office of the company from Mumbai to National Capital Region (NCR). The Board has approved the change. The Board has to seek the approval of the members of the company for going ahead with the legal formalities as required under the Companies Act, 2013, for which the extraordinary general meeting of the members is scheduled to be held on 17th June, 2017. In this connection you are required to draft notice of the EGM for shifting of office outside the state and give explanatory statement in this regard.

[June 2017 (8 Marks)]

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Ans.:

Day Night Prakashani Ltd.

Registered Office: _____

CIN: _____ Website: _____ E-mail: _____ Tel: _____ Fax: _____

Date _____

NOTICE

NOTICE is hereby given that pursuant to Section 13 of the Companies Act, 2013 and Rule 22 of the Companies (Management & Administration) Rules, 2014 the company is seeking consent of the shareholders through a Special Resolution, set out below, for the shifting of the Registered Office from the State of Maharashtra (Mumbai) to State of Delhi (National Capital Region) and for alteration in Clause II of the Memorandum of Association of the Company pursuant to the change in the registered office address of the Company.

"RESOLVED THAT pursuant to the provisions of the Section 13 and other applicable provisions, if any, of the Companies Act, 2013 and the rules made thereunder and subject to the approval of the Central Government, consent of the members be and is hereby accorded for shifting of registered office of the Company from State of Maharashtra (Mumbai) to State of Delhi (National Capital Region) and that the Clause II of the Memorandum of Association of the Company be substituted by the following clause:

"II. The registered office of the Company will be situated in the State Delhi (National Capital Region) *i.e.* within the jurisdiction of the Registrar of Companies, Delhi."

RESOLVED FURTHER THAT Board of Directors of the Company be and is hereby authorized to take such steps and to do such acts & deeds as they may deem necessary and proper in this matter."

For Day Night Prakashani Ltd.

Dated: _____

By order of the Board,

Company Secretary

Note:

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member.
2. The Explanatory Statement pursuant to Section 102 of the Companies Act, 2013, in respect of special resolution set out above is annexed hereto.

Annexure

Explanatory Statement

(Pursuant to Section 102 of the Companies Act, 2013)

The Company was incorporated under the provision of the Companies Act, 2013, in the State of Maharashtra. As per Clause II of the Memorandum of Association of the Company, the Registered Office of the Company is presently situated in the Maharashtra at Mumbai.

As per the shareholding pattern the majority of shares are held by shareholders residing in Delhi (National Capital Region).

Your approval is sought for voting by postal ballot in terms of the provisions of Section 110 of the Companies Act, 2013 read with the Companies (Management & Administration) Rules, 2014.

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In accordance with the provision of Section 13 of the Companies Act, 2013 pursuant to the shifting of the Registered Office from one state to another alteration in Clause II of the Memorandum of Association of the Company, which requires the approval of shareholders in General Meeting by way of Special Resolution to give effect to such change. Further, pursuant to the provisions of Section 110 of the Companies Act, 2013 and the Companies (Management & Administration) Rules, 2014 the Special Resolution for shifting of Registered Office from one state to another is required to be passed by way of Postal Ballot.

In view of the above your approval is sought through Postal Ballot for shifting the Registered Office of the Company from the State of Maharashtra to the State of Delhi (National Capital Region) and for altering Clause II of the Memorandum of Association.

The proposed change will in no way be detrimental to the interest of any member of Public, Employees or other Associates of the Company in any manner whatsoever.

The Board recommends the aforesaid Special Resolution for your approval.

None of the Directors of the Company are concerned or interested in the said resolution except in the capacity as member of the Company.

60. OP Ltd. wants to increase its Authorized Share Capital from ₹ 50,00,000 divided into 5,00,000 Equity Shares of ₹ 10 each to ₹ 75,00,000 divided into 7,50,000 Equity Shares of ₹ 10 each by creation of additional 2,50,000 Equity Shares of ₹ 10 each ranking *pari passu* in all respect with the existing Equity Shares of the Company. Draft specimen of Board and General Body Resolutions for increasing the Authorized Share Capital and for alteration of Capital Clause in the Memorandum of Association of the Company.
[Dec. 2021 (5 Marks)]

Ans.: Specimen of the Board Resolutions for increasing the Authorized Share Capital and for alteration of Capital Clause in Memorandum of Association of the Company are as follows:

Specimen resolution for increase in Authorized Share Capital:

RESOLVED THAT pursuant to the provisions of Sections 61 & 64 and other applicable provisions, if any, of the Companies Act, 2013 and the Rules framed thereunder, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, to increase the Authorized Share Capital of the Company from existing ₹ 50,00,000 divided into 5,00,000 Equity Shares of ₹ 10 each to ₹ 75,00,000 divided into 7,50,000 Equity Shares of ₹ 10 each by creation of additional 2,50,000 Equity Shares of ₹ 10 each ranking *pari passu* in all respect with the existing Equity Shares of the Company.

Specimen resolution for alteration in the Capital Clause of MOA of the company:

"RESOLVED THAT pursuant to the provisions of Sections 13, 61 & 64 and other applicable provisions of the Companies Act, 2013 and the Rules framed thereunder, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, for substituting Clause V of the Memorandum of Association of the Company with the following clause.

V. The Authorized Share Capital of the Company is ₹ 75,00,000 divided into 7,50,000 Equity Shares of face value of ₹ 10 each."

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Shareholder's Resolution to be passed in the General Meeting:

Special Business:

1. To consider, and if thought fit, to pass with or without modification(s), the following resolution as an Ordinary Resolution:

RESOLVED THAT pursuant to the provisions of Sections 61 & 64 and other applicable provisions, if any, of the Companies Act, 2013 and the Rules framed thereunder, the consent of the members of the Company be and is hereby accorded to increase the Authorized Share Capital of the Company from existing ₹ 50,00,000 divided into 5,00,000 Equity Shares of ₹ 10 to ₹ 75,00,000 divided into 7,50,000 Equity Shares of ₹ 10 each by creation of additional 2,50,000 Equity Shares of ₹ 10 each ranking *pari passu* in all respect with the existing Equity Shares of the Company.

RESOLVED FURTHER THAT the Memorandum of Association of the Company be altered in the following manner *i.e.* existing Clause V of the Memorandum of Association of the company be deleted and the same be substituted with the following new clause as Clause V:

"**V.** The Authorized Share Capital of the Company is ₹ 75,00,000 divided into 7,50,000 Equity Shares of face value of ₹ 10 each."

RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorized to take all such steps and actions and give such directions as may be necessary for the purpose of giving effect to this resolution.

LEGAL STATUS OF COMPANY

61. Members of a company incorporated under the Companies Act, 2013 are the agents of the company. Therefore, the company can be held liable for their acts. Comment. [Dec. 2017 (5 Marks)]

Ans.: As per Section 9 of the Companies Act, 2013, the Company is vested with a corporate personality quite distinct from individuals who are its members.

Being a separate legal entity it bears its own name and acts under a corporate name. It has a seal of its own. Its assets are separate and distinct from those of its member.

Members (Shareholders) of a company are not the agents of the company and so they cannot bind the company by their acts.

The company does not hold its property as an agent or trustee for its members and they cannot sue to enforce its rights, nor can they be sued in respect of its liabilities.

Thus, members of the company are not agents of the company, the company cannot be held liable for their (members) acts.

62. POR Ltd. was incorporated as a Government Company. The Authorized Share Capital of the Company is ₹ 15 Crore. The Paid-up Share Capital of the Company is ₹ 3 Crore. What provisions of Section 203 of the Companies Act, 2013 are applicable to a Government Company with respect to appointment of Key Managerial Personnel? [Dec. 2020 (4 Marks)]

Ans.: Section 203 of the Companies Act, 2013 read with Rule 8 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 mandates

the appointment of whole-time Key Managerial Personnel and makes it obligatory for every listed company and every other public company having a paid-up share capital of ₹ 10 Crore or more, to appoint the following whole-time key managerial personnel:

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

Further Rule 8A requires that every private company which has a paid-up share capital of ₹ 10 Crore or more shall have a Whole-time Company Secretary.

Ministry of Corporate Affairs, Government Companies are granted certain exemptions by issuing notification.

As per the said notifications:

The provisions Section 203(*1*) to (*4*) of the Companies Act, 2013 with respect to appointment of Key Managerial Personnel, holding of office, period within which appointment to be made in case of vacation of office, 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.

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 provisions of Section 203 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 Crore which is less than prescribed limit, it is not required to appoint the Whole-time Key Managerial Personnel in the Company.

63. State the consequences in each of the following cases giving reasons for your answers:

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

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

[June 2021 (5 Marks)]

Ans.:

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

This number does not include past and present employees. Moreover, where two or more persons hold one or more shares in a company jointly, they shall, be treated as a single member.

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Hence, the company is within the maximum limit of 200 members. The answer would have remained same even if 5 employees leave the employment as threshold limit of 200 persons for private company does not take into account past employees.

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

Section 149(*1*) requires that every public company shall have a minimum number of 3 directors. Further, Section 161(*4*) states that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next General Meeting.

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

64. PQR Power Corporation Ltd. is a Government Company incorporated on 1.12.2018. The Comptroller & Auditor General of India (CAG) has appointed the Auditors for the Company on 9.1.2019. Akshay, filed an RTI on 5.3.2019, 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 Ltd. [June 2021 (4 Marks)]

Ans.: (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 & Auditor General of India (CAG) within 60 days from the date of registration of the Company. If CAG 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 Ltd. is a government company incorporated on 1.12.2018 and CAG has appointed the Auditor on 9.1.2019 *i.e.* within 60 days from the date of incorporation of the corporation. Hence the contention of Mr. Akshay is invalid.

(II) Appointment of auditor 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 AGM.

65. 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. [June 2022 (4 Marks)]

Ans.: Considering the provisions of Section 96 of the Companies Act, 2013, answer to given case is as follows:

(*i*) First AGM of the company should be held within 9 months from the closing of the first financial year. *So, the given statement is incorrect.*

(*ii*) In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any AGM shall be held. Such extension can be for a period not exceeding 3 months. *So, the given statement is incorrect.*

(*iii*) Subsequent AGM should be held within 6 months from the closing of the financial year and the gap between two AGM should not exceed 15 months. *So, the given statement is incorrect.*

(*iv*) An AGM can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a national holiday. *So the AGM of the company can be held on Saturday.*

66. Matrix Limited is an unlisted company, having its registered office at Chennai. The Annual General Meeting was held at Goa on 1st July, 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa was received by 24th June, 2021 through e-mail.

(*i*) Examine the validity of the meeting as per the provisions of the Companies Act, 2013.

(*ii*) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director. [Dec. 2022 (2 + 2 = 4 Marks)]

Ans.: (*i*) Time for holding AGM: As per Section 96 of the Companies Act, 2013, every AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. There are no restrictions as to when an AGM should end.

Thus, Matrix Limited has complied with provisions relating to 'time for holding AGM'.

Place for holding AGM: AGM shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered

office of the company is situate. However, AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Since consent of the members for holding AGM at a place other than registered office is received in advance through e-mail, Matrix Limited can hold its AGM at Goa.

***(ii)* Statement to be annexed to notice:** As per Section 102(*1*), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice of the meeting:

(*a*) The nature of concern or interest, financial or otherwise, if any, in respect of each items of:

- Every director and the manager,
- Every other KMP and
- Relatives of the director, manager & KMP.

(*b*) Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon.

Consequences of resolution passed in general meeting without sufficient disclosure regarding interest of a director [Section 102(*4*) & (*5*)]:

1. **Hold benefit in trust:** Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in Section 102(*1*), any benefit which accrues to promoter, director, manager, or other KMP or their relatives, either directly or indirectly, then such persons shall hold such benefit in trust for the company.

   Such persons are also liable to compensate the company to the extent of the benefit received by him.

2. **Penalty:** Every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of ₹ 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other KMP or any of his relatives, *whichever is higher*.

67. Shankar Narain, director of Rakant Business Solutions Ltd. resigned with effect from 1st April, 2021. As required under the provisions of the Companies Act, 2013, the company has filed e-Form DIR-12 with the Registrar of Companies mentioning the date of resignation as 30th June, 2021 being the date of acceptance of such resignation by the Company. The Company continued to issue various cheques (with pre-printed signatures of resigned director) in the ordinary course of its business to its investors in repayment of the deposits after 1st April, 2021 but the said cheques were dishonoured. The investors filed complaint against the company and Shankar Narain, the former director of the company. Discuss and advice whether Shankar Narain shall be liable or not in this case for the cheques issued till 30th June, 2021. [Dec. 2022 (2 Marks)]

Ans.: Resignation of director: As per Section 168 of the Companies Act, 2013, a director may resign from his office by giving a notice in writing to the company.

The Board shall on receipt of such notice take note of the same and the company shall intimate the ROC within 30 days from the date of receipt of notice of resignation from a director in Form DIR-12.

The company shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

However, a director may also forward a copy of his resignation along with detailed reasons for the resignation to the ROC within 30 days of resignation.

Effective date of resignation: The resignation of a director shall take effect from the date on which the notice is received by the company or the date specified by the director in the notice, *whichever is later*.

Liability of director who has resigned: The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

As per the facts given case, the effective date of resignation is 1st April, 2021 and hence Shankar Narain, director of Rakant Business Solutions Ltd. is not liable for the transactions entered by the company after 1st April, 2021.

68. Lakshmi Tube Lights Private Limited has committed a default which is in violation of the provisions of the Companies Act, 2013. No specific penalty or punishment is provided in the Act for the said default. In the given circumstances, decide the quantum of punishment for contravention that may apply to Lakshmi Tube Lights Private Limited, as provided under the Companies Act, 2013. [Dec. 2022 (2 Marks)]

Ans.: Punishment where no specific penalty or punishment is provided [Section 450]: If a company or any officer of a company or any other person contravenes any of the provisions of the Act or the rules made thereunder, for which no penalty or punishment is provided elsewhere in the Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ₹ 10,000, and in case of continuing contravention, with a further penalty of ₹ 1,000 for each day after the first during which the contravention continue, subject to a maximum of ₹ 2 lakh in case of a company and ₹ 50,000 in case of an officer who is in default or any other person.

Thus, Lakshmi Tube Lights Private Limited and its officer in default are liable to penalty as stated above.

INCORPORATION OF COMPANY

69. Prepare list of documents required to be attached to e-Form SPICe+ at the time of incorporation of Public Company.

Ans.: Incorporation application is filed in e-Form SPICe+ along with the following attachments:

1. Memorandum of Association (MOA).
2. Article of Association (AOA).
3. Declaration by professional in Form INC-14 that the MOA and AOA have been drawn up in conformity with the provisions of Companies Act, 2013

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and the Rules made thereunder and all other requirements of the act relating to incorporation of Company have been complied with.

4. Declaration by each of the persons making the application in the Form INC-15.
5. Declaration by First Directors and Subscribers.
6. Address Proof of the subscribers.
7. Identity proof of subscribers.
8. The verification of the registered office shall be filed in Form INC-22 and the following documents shall be attached thereto:
   (*a*) The registered document of the title of the premises of the registered office in the name of the company or the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month.
   (*b*) The authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office.
   (*c*) The proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, which is not older than two months.

70. Ehsan along with his nine friends desires to incorporate a Company, not for profit, for the protection of environment, as permissible under the Companies Act, 2013. Advise them on procedural aspect for the incorporation and formation of such company. [Dec. 2018 (5 Marks)]

Ans.: Following are the steps involved in incorporation of Section 8 company:

Step 1 – Reservation of Name: Applicant have to login into their account on MCA Website.

(Pro-existing users can use earlier account or new users have to create a new account.)

After Login user have to click on the icon SPICe+ in MCA Service.

An online form shall be open.

Applicants have to fill the information online

Step 2 – Application for License from CG: After obtaining name, an application seeking license for the formation of proposed Company is to be made in **e-Form INC 12** to the ROC.

Step 3 – License granted by CG: Central Government if satisfied will issue license to the company in **e-Form INC 16.**

Step 4 – Incorporation of Company: After obtaining the license number, applicant can proceed further to incorporate a company by filing **e-Form SPICe** along with required attachments.

Step 5 – Certificate of Incorporation: If concerned ROC is satisfied that all the requirements of the Companies Act, 2013 have been complied with, ROC will register the association of person as a company under section 8(*1*) and will issue a certificate of incorporation carrying a unique Company Identification Number.

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Requirements as to MOA & AOA: The MOA/AOA shall *inter alia* provide the following:

- Object of the proposed company must be the promotion of commerce, art science, sports, education, social welfare, religion, charity, and protection of environment or any such other object.
- The proposed company shall intend to apply its profits, if any or other income in promoting its objects.
- Intend to prohibit the payment of dividend to its members.

In this case, Ehsan and his Friends can incorporate a Company registered under section 8(*1*) as above and will be able to enjoy all the privileges and be subject to all the obligations of a limited company under the Companies Act, 2013.

71. 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? [Dec. 2020 (3 Marks)]

Ans.: 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 'SPICe +'.

SPICe + offers 11 services by 3 Central Government Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labour & Department of Revenue in the Ministry of Finance) and two State Governments (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.

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 INC-32 (SPICe+) and AGILE Pro.

72. 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 the Companies (Incorporation) Rules, 2014. Comment about applicability of Active Compliance with respect to ABC Ltd., a Government Company. [Dec. 2020 (5 Marks)]

Ans.: Filing of Form ACTIVE: 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 **Form ACTIVE** [*Active Company Tagging Identities & Verification*].

Time limit for filing Form ACTIVE: Form ACTIVE has to be filed on or before June 15, 2019.

Exempted companies: Following companies are exempted for filing 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.

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

In given case, the ABC Ltd. was incorporated as Government Company after December 31, 2017, hence, there is no need to file Form ACTIVE for such companies.

73. Natasha 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.
[June 2021 (4 Marks)]

Ans.: (*a*) Filing of Form ACTIVE: 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 **Form ACTIVE** [*Active Company Tagging Identities & Verification*].

(*b*) Time limit for filing Form ACTIVE: Form ACTIVE has to be filed on or before June 15, 2019.

(*c*) Consequence of non-filing of Form ACTIVE: 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.

(*d*) Late filing of Form ACTIVE: Where a company files Form ACTIVE, on or after 16th June, 2019, the company shall be marked as 'ACTIVE Compliant', on payment of fee of ₹ 10,000.

(*e*) Forms that cannot be filed by Company in 'ACITIVE Non-compliant' status: No request for recording the following event based information or changes can be accepted by the ROC from such companies who are marked as 'ACTIVE Non-compliant', unless Form ACTIVE is filed, namely:

- Form SH-7 (Change in Authorized Capital)
- Form PAS-3 (Change in Paid-up Capital)
- Form INC-22 (Change in Registered Office)
- Form INC-28 (Amalgamation, demerger)

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- Form DIR-12 (Changes in Director) *except in case of:*
  - Cessation of any director.
  - Appointment of directors in such company where the total number of directors are less than the minimum number provided section 149(*1*)(*a*) of the Companies Act, 2013 on account of disqualification of all or any of the director under section 164.
  - Appointment of any director in such company where DINs of all or any of its director(s) have been deactivated.
  - 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 & Bankruptcy Code, 2016.

3 CHAPTER

LIMITED LIABILITY PARTNERSHIP

INTRODUCTION

1. State the advantages of the limited liability partnership form of business organization.

Ans.: Advantages of LLP are as follows:

- **Easy to form:** Forming LLP is an easy process. It is less complicated and time consuming unlike the process of formation of a company.
- **Liability:** The partners of the LLP have limited liability which means partners are not liable to pay the debts of the LLP from their personal assets. No partner is responsible for any other partner's misconduct.
- **Perpetual Succession:** The life of the LLP is not affected by death, retirement or insolvency of the partner. The LLP will get wound up only as per provisions of the LLP Act.
- **Management of the company:** LLP has two or more partners, who own and manage the business. This is different from a private limited company, whose directors may be different from shareholders.
- **Easy transferability of ownership:** There is no restriction upon joining and leaving the LLP. It is easy to admit as a partner and to leave the firm or to easily transfer the ownership to others.
- **Taxation:** LLP is not subject to Dividend Distribution Tax (DDT). A distributed profit in the hands of the partners is not taxable. For Income Tax purposes, LLP is treated on par with partnership firms.
- **No compulsory audit required:** Every business has to appoint an auditor for checking the internal management of the company and its accounts. However, in the case of LLP, there is no mandatory audit required. The audit is required only in those cases where the turnover of the LLP exceeds ₹ 40 lakh and where the contribution exceeds ₹ 25 lakh.
- **Fewer compliance requirements:** LLP is much easier and cheaper to run than a private limited company as there are just three compliances per year. On the other hand, a private limited company has a lot of compliances to fulfil and has to compulsorily conduct an audit of its books of account.
- **Flexible agreement:** The partners are free to draft the agreement as they please, with regard to their rights and duties.
- **Easy to wind-up:** Not only is it easy to start, it is also easier to wind-up an LLP, as compared to a private limited company.

2. Distinguish between: Limited Liability Partnership & Company

Ans.: Following are the main points of distinction between LLP and Company:

Points	Limited Liability Partnership	Company
Meaning	Limited liability partnership means a partnership formed and registered under the LLP Act, 2008.	Company means a company incorporated under the Companies Act, 2013 or under any previous company law.
Governing Law	Limited liability partnerships are governed by the Limited Liability Partnership Act, 2008.	Companies are governed by the Companies Act, 2013 and various Rules made thereunder.
Internal rules & regulation	Internal rules and regulation of LLP's are governed by the LLP agreement.	Internal rules and regulation of the companies are governed by the MOA & AOA.
Meetings	In the LLP Act, there is no stipulation for meeting of partners either periodically or compulsory at the year end.	Every company must hold AGM every year. Every company must hold 4 board meetings and gap between two meetings should not be more than 3 months.
Business	In LLP, each partner has the authority to do business unless expressly prohibited by the partnership terms.	In case of a company no individual director can conduct the business of the company.
Remuneration	There are no provisions in the LLP Act, 2008 regulating the remuneration payable to designated partners.	The Companies Act, 2013 regulates the remuneration payable to directors.
Borrowing power	There are no restrictions on the borrowing powers on the LLP.	There are restrictions on borrowings power on the companies.
Accounts	LLP can choose to maintain the accounts on cash basis/accrual basis.	Companies have to keep their accounts on accrual basis.
Audit	Audit of LLP is not compulsory if the capital contributed does not exceed ₹ 25 lakh or if the turnover does not exceed ₹ 40 lakh.	Audit of a company is compulsory.
Cost Audit	Cost audit is not applicable for LLPs.	Certain companies are required to do cost audit also.
Company Secretary	The appointment of Company Secretaries is not provided in the LLP Act, 2008.	Certain companies are required to appoint Company Secretary.

3. What are the salient features of the Limited Liability Partnership (LLP)? [June 2009 (8 Marks)], [Dec. 2009 (6 Marks)]

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Ans.: The salient features of the Limited Liability Partnership (LLP) are as follows:

- The LLP is a body corporate and a legal entity separate from its partners.
- Any 2 or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the ROC, form a LLP.
- The LLP has a perpetual succession.
- The mutual rights and duties of partners of an LLP *inter se* and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP.
- A LLP is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be tangible or intangible in nature or both tangible and intangible in nature.
- No partner would be liable on account of the independent or unauthorized acts of other partners or their misconduct.
- Every LLP shall have at least 2 partners and shall also have at least 2 individuals as Designated Partners, of whom at least one shall be resident in India.
- A LLP shall maintain annual accounts reflecting true and fair view of its state of affairs.
- A statement of accounts and solvency shall be filed by every LLP with the ROC every year.
- Accounts of LLPs shall also be audited.
- The Central Government has power to investigate the affairs of an LLP by appointment of competent inspector for the purpose.
- The Indian Partnership Act, 1932 shall not be applicable to LLPs.
- A partnership firm, a private company and an unlisted public company may convert themselves to LLP in accordance with provisions of the proposed legislation.
- The Central Government has made rules for carrying out the provisions of the LLP Act.

4. A Limited Liability Partnership can become member in a company incorporated under the provisions of the Companies Act, 2013.
[June 2017 (5 Marks)]

Ans.: Subject to the Memorandum and Articles, any *sui juris* (*a person who is competent to contract on its own behalf*) except the company itself, can become a member of a company.

Being an incorporated body under the statute, LLP can become a member of a company.

Example: Value Rating Advisors LLP can become shareholder in Reliance Industries Ltd.

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PROVISIONS OF THE LLP ACT, 2008

5. Who can become a partner in LLP? Also state the disqualification of partners in LLP.

Ans.: Partners [Section 5]: Any individual or body corporate may be a partner in a LLP.

Disqualification of partners in LLP: An individual shall not be capable of becoming a partner of a limited liability partnership, if –

- He has been found to be of unsound mind by a Court of competent jurisdiction.
- He is an undischarged insolvent.
- He has applied to be adjudicated as an insolvent and his application is pending.

6. Anuragh & Shailesh are interested to start a new business of real estate under LLP form of business organization. As a Practicing Company Secretary advise them regarding procedure to be followed for incorporation of LLP.

Ans.: Summary procedure for incorporation of LLP is as under:

(1) **Procure DSC & DIN:** Procure DSC and DIN for the individuals acting as Designated Partners of LLP. A person, who already has a DIN, is not require to obtain any new DIN.

Any person proposed to become the Designated shall have to make an application through **e-Form FiLLiP**.

An application for allotment of DIN up to two Designated Partners, shall be filed in e-form FiLLiP with the ROC, in case of proposed Designated Partners not having approved DIN.

(2) **Name Reservation:** The first step in incorporation of an LLP is reservation of name of the proposed LLP. There are two ways of reserving name of the proposed LLP.

- File an application under RUN-LLP for ascertaining availability and reservation of the name of an LLP.
- Name can be proposed in e-form FiLLiP, an application for incorporation of LLP.

(3) **Incorporate LLP:** After reserving a name under RUN-LLP, applicant should file e-form FiLLiP for incorporating a new LLP.

E-form FiLLiP contains details of LLP proposed to be incorporated, Partners/ Designated Partners details and consent of the Partner/Designated Partners to act as Partners/Designated Partners.

On approval of the form, the ROC will issue the certificate of incorporation.

(4) **Resubmission of documents in case of defective application:** Where the Registrar, on examining Form FiLLiP, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within 15 days from the date of such intimation given by the Registrar.

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After re-submission of the document, if the ROC still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of 15 days time to remove such defects or deficiencies.

However, total period for re-submission of documents shall not exceed 30 days.

(5) **Documents to be attached with form FiLLiP:**

- Consent of partners.
- In case of partners are body corporates, certified true copy of board resolution passed by such body corporate partners.
- Proof of address of registered office of LLP.
- Subscribers' sheet including consent.
- Detail of LLP(s) and/or company(s) in which partner/designated partner is a director/partner.
- Copy of approval obtained from any sectoral regulator/in-principle approval.
- Identity and address proof of individuals acting as Partner and/or Designated Partner.
- List of main objects of an LLP.
- If the name proposed is liked to registered trademark, NOC from the trade mark owner.
- NOC of foreign body corporate for usage of name. (*In case of foreign entities intending to incorporate LLPs in India*)

7. Write a short note on: Annual Return of LLP

Ans.: (1) Annual Return [Section 35(1)]: Every LLP shall file an annual return duly authenticated with the ROC within **60 days** of closure of its financial year.

(2) Penalty if LLP fails to file annual return [Section 35(2)]: If any LLP fails to file its annual return before the expiry of specified period, such LLP and its designated partners shall be liable to a penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 1,00,000 for the LLP and ₹ 50,000 for designated partners.

Provisions of LLP Rules, 2009 relating to annual return are as follows:

(3) Annual Return Form [Rule 25(*1*)]: Every LLP shall file an annual return with the ROC in **Form 11.**

(4) Certificate to the effect that annual return contains true and correct information [Rule 25(*2*)]:

(*a*) **Certificate from designated partner:** Annual return of an LLP having **turnover** up to **₹ 5 Crore** during the corresponding financial year or **contribution** up to **₹ 50 lakh** shall be accompanied with a certificate from a designated partner, other than the signatory to the annual return, to the effect that annual return contains true and correct information.

(*b*) **Certificate from Practicing Company Secretary:** In all other cases, the annual return shall be accompanied with a certificate from a Company

Secretary in practice to the effect that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.

8. Registered office of NOVA LLP is currently situated at Pune. Prepare a checklist and various compliance required to be made if the registered office is –

(*i*) Changed within the city of Pune

(*ii*) Changed from Pune to Mumbai

(*iii*) Changed from Pune to Delhi

Ans.: Where the partners wish to change the registered office of the company from one place to another, the same can be done by following the procedure stated in Rule 17 of the LLP Rules, 2009. Form 15 is to be filed within 30 days of change of registered office. The procedure for the change in registered office of LLP is given below:

File Form 15 within 30 days of the change in registered office.

Documents to be attached with Form 15

- Proof of changed address of registered office is a mandatory attachment.
- Either 'Copy of the minutes of decision/resolution/consent of partners' or 'the extracts of the relevant provisions of the LLP Agreement' is to be provided as mandatory attachment.
- In case of 'change of place of the registered office from one State to another State', it is mandatory to enclose copies of public notice and consent of secured creditors.
- Any other information can be provided as an optional attachment.

Checklist for Shifting of Registered Office of the LLP:

Action to be taken	Change of Registered office within the same State and within jurisdiction of same ROC	Change of Registered Office within the same State from the jurisdiction of one ROC to another ROC	Change of registered office from *one State to another State*
	[*Within the city of Pune*]	[From Pune to Mumbai]	[From Pune To Delhi]
Consent of partners	Consent of all partners shall be required.	Consent of all partners shall be required.	Consent of all partners shall be required.
Consent of Secured Creditors	No Consent Required	No Consent Required	Consent Required
Form	Form 15 is required to be filed along with the prescribed fees.	Form 15 is required to be filed along with the prescribed fees.	Form 15 is required to be filed along with the prescribed fees.

Action to be taken	Change of Registered office within the same State and within jurisdiction of same ROC	Change of Registered Office within the same State from the jurisdiction of one ROC to another ROC	Change of registered office from *one State to another State*
	[*Within the city of Pune*]	[From Pune to Mumbai]	[From Pune To Delhi]
Public Notice	No public notice required.	No public notice required.	Public notice is required to be given in an English daily newspaper and vernacular daily newspaper where the registered office is situated.

9. ABC LLP has its registered office in Kanpur (U.P.) for better administrative convenience, the LLP wants to shift its registered office from Kanpur to NCT of Delhi. Advise the LLP regarding the various formalities which need to be complied with for shifting its registered office from Kanpur to NCT of Delhi under Limited Liability Partnership Act, 2008. [June 2023 (4 Marks)]

Ans.: Following formalities are to be observed by the ABC LLP for shifting registered office from Kanpur (UP) to NCT (Delhi):

Where the partners wish to change the registered office of the company from one place to another, the same can be done by following the procedure stated in Rule 17 of the LLP Rules, 2009. Form 15 is to be filed within 30 days of change of registered office. The procedure for the change in registered office of LLP is given below:

File Form 15 within 30 days of the change in registered office.

Documents to be attached with Form 15:

- Proof of changed address of registered office is a mandatory attachment.
- Either 'Copy of the minutes of decision/resolution/consent of partners' or 'the extracts of the relevant provisions of the LLP Agreement' is to be provided as mandatory attachment.
- In case of 'change of place of the registered office from one State to another State', it is mandatory to enclose copies of public notice and consent of secured creditors.
- Any other information can be provided as an optional attachment.

Checklist for Shifting of Registered Office of the LLP:

Action to be taken	Change of registered office from one State to another State [From Kanpur (UP) to NCT (Delhi)]
Consent	Consent of all partners shall be required.
Consent of Secured Creditors	Consent Required

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Form	Form 15 is required to be filed along with the prescribed fees.
Public Notice	Public notice is required to be given in an English daily newspaper and vernacular daily newspaper where the registered office is situated.

10. There are no shareholders in limited liability partnership, instead there are partners. Comment. [June 2010 (5 Marks)]

Ans.: Minimum number of partners [Section 6]: Every LLP shall have at least 2 partners.

If at any time the number of partners of a LLP is reduced below 2 and the business of the LLP is carried by the remaining one partner even after 6 months from the reduction of number below 2, he shall be liable personally for the obligations of the LLP incurred after 6 months.

Maximum number of partner: There is no upper limit on number of partners in an LLP.

Thus, there are no shareholders in LLP, instead there are partners.

11. Mohan has been appointed as a passive partner in the Limited Liability Partnership (LLP). He seeks your advice on the responsibilities of the designated partner where the LLP has contravened the provisions of the LLP Act, 2008. Referring to the provisions of the LLP Act, 2008 advise him in the matter. [June 2018 (4 Marks)]

Or

What are the duties of Designated Partner of LLP? [Dec. 2020 (4 Marks)]

Ans.: Rights & duties of Partners of LLP: As per Section 23 of the LLP Act, 2008, the mutual rights and duties of the partners of LLP shall be governed by the LLP Agreement.

In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

Liabilities of designated partners [Section 8]: A designated partner shall be –

(*a*) 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 Act including filing of any document, return, statement and the reports.

(*b*) Liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Responsibilities of Designated Partner - Where the LLP has contravened the provisions of LLP Act, 2008:

(1) The Designated Partners 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.

(2) 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 LLP Act, 2008, including filing of any document, return, statement and the like report etc.

(3) The Designated Partners shall protect the property and assets of the LLP.

(4) The Designated Partners would be liable to all penalties imposed on the LLP for the contravention of the provisions of the Act.

(5) Upon every reasonable request, the Designated Partners 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.

(6) The Designated Partners shall punctually pay their separate debts to the LLP.

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

(8) The designated partner would be required to pay all the monetary fines imposed on the LLP. There is no provision in the Act providing for the reimbursement of such monetary penalties to him by the LLP.

(9) Further in the following instances apart from the LLP, the designated partner would also be imposed monetary penalties under the Act –

- For non-compliance with the directions of the Central Government for change of name.
- For non-maintenance of books of account, non-filing of accounts, duly audited where such an audit is mandatory.
- For non-filing of the annual return of the LLP.

12. A limited liability partnership registered in Singapore is proposing to establish a place of business in Mumbai. Comment. [June 2013 (5 Marks)]

Ans.: Foreign limited liability partnership [Section 59]: The Central Government may make rules for provisions in relation to establishment of place of business by foreign LLPs within India and carrying on their business.

As per Rule 18(*4*), a foreign LLP or firm or company may apply in **Form 25** to the Registrar for reserving its existing name by which it is registered in the country of its regulation or incorporation and not allotting to any LLP in India.

Such reservation shall be valid for 3 years but may be renewed on a fresh application along with payment of fee.

A foreign LLP shall, within 30 days of establishing a place of business in India, file with the ROC in **Form 27**:

- A copy of the certificate of incorporation or registration of the LLP.
- Full address of the registered or principal office of the LLP in the country of its incorporation.
- Full address of the office of the LLP in India which is to be deemed as its principal place of business in India.
- List of partners and designated partners, if any, and the names and addresses of two or more persons resident in India, authorized to accept on behalf of the LLP, service of process and any notices or other documents required to be served on the LLP.

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13. What are the duties of the Partners of LLP?

Ans.: As per Section 23 of the LLP Act, 2008, the mutual rights and duties of the partners of a LLP shall be governed by the LLP agreement.

In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

Duties of partners of LLP as per First Schedule:

(1) **Duty to share profits & losses equally:** All the partners of LLP are entitled to share equally in the capital, profits and losses of the LLP if partners are not agreed on profit sharing ratio.

(2) **Duty to indemnify for loss caused by fraud:** Every partner shall indemnify the LLP for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.

(3) **Not to claim remuneration:** No partner shall be entitled to remuneration for acting in the business or management of the LLP.

(4) **Duty to render true accounts and full information:** Each partner shall render true accounts and full information of all things affecting the LLP to any partner or his legal representatives.

(5) **Not to carry on competing business:** If a partner, without the consent of the LLP, carries on any business of the same nature as and competing with the LLP, he must account for and pay over to the LLP all profits made by him in that business.

(6) **Not to make personal profits:** Every partner shall account to the LLP for any benefit derived by him without the consent of the LLP from any transaction concerning the LLP, or from any use by him of the property, name or any business connection of the LLP.

(7) **Not expel partner:** No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

14. XYZ Trading LLP registered under the 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.
[Dec. 2021 (4 Marks)]

Explain the procedure for changing the name of Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008.
[June 2022 (4 Marks)]

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

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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 5, giving notice of the change in the name to the ROC.
- 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 ROC.

LLP AGREEMENT

15. State any ten essential clauses to be included while drafting LLP Agreement.

Ans.: LLP agreement means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

LLP agreement defines the roles, responsibilities, rights, and powers of the partners to LLP and to each other. Hence, it creates the foundation for the smooth running of LLP. LLP agreement clarifies the managerial, operational as well administrative responsibilities and sets clear methodologies for decision making, adding a new partner and disassociation of existing partner.

Essential clauses to be included in the LLP Agreement:

- **Interpretation/Definitions:** This clause is the essence of any LLP agreement. An LLP Agreement must provide for various definitions such as the definition of designated partners, the accounting period, business of LLP and the name with which the LLP will be known. The agreement must also provide with full address of the registered office of the LLP as well as the address of all the partners.
- **Designated Partners:** LLP agreement shall clearly mention the name, age and address of each of the Designated Partners correctly.

- **Name of the LLP and changes to it:** This clause shall state that business of the LLP shall be carried on in the name and style of _____ [Name of LLP]. Any change in the name of the LLP shall be notified to the Registrar by the Designated Partner.
- **Registered Office of the LLP:** LLP agreement shall state that partnership business shall be carried on at the under mentioned address, which shall also be its registered office. The business shall also be carried from such other places as may be mutually decided by the partners from time to time.
- **Business of the LLP:** This clause must clearly specify the nature of the business that the LLP will be carrying on. The LLP may engage in any and all activities necessary, desirable or incidental to the accomplishment of the conduct of such business of the LLP including but not limited to such ancillary business. It may also include any other business conducted in such manner as may be decided by the majority of partners from time to time.
- **Capital Contribution:** Total contribution of the LLP and the contribution by each partner along with the percentage of contribution to be mentioned in this clause. Manner in which contribution can be withdrawn by the partners shall also be stated in this clause.
- **Profit Sharing Ratio:** An ideal LLP Agreement must also mention the ratio in which the profits and the losses of the business will be shared among the partners. The partners must clearly state the amount of profit that each member receives, or the amount of the loss that they're liable for will be set out in the agreement.
- **Rights & Duties of Designated Partners:** 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 Act, 2008 will apply as given in Section 23(4) of the said act.
- **Admission, Retirement, Resignation & Expulsion of Partners:** LLP agreement must include the provisions regarding admission of new partners, retirement as well as the death of a partner, etc. The agreement must provide guidelines for the expulsion of partners as well.
- **Remuneration & interest to be paid to partners:** The LLP agreement shall contain a clause regarding the amount of remuneration to the Designated Partner(s), for rendering the services as such. This clause shall contain the rate of interest to be paid to the partners on their capital contribution.
- **Bank Account:** This clause shall set out the modus operandi of the bank account transactions of the LLP.
- **Books of account and accounting year:** The LLP agreement shall contain clause relating to maintenance of books of account and other documents, method of accounting and the details relating to the Accounting year of the LLP.

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VARIOUS COMPLIANCE TO BE MADE BY THE LLP

16. Raja and Rani had recently formed RR LLP. They engage you as a Practicing Company Secretary to help them to make various compliance required to be made under LLP Act, 2008. You are required to prepare a brief note explaining the various event based compliance required to be made under the LLP Act, 2008 and the Rules made thereunder.

Ans.: Following are certain event based compliances applicable on the LLP which needs to be complied by the LLP on happening of certain event:

Event	Section	Compliance requirement
Consent & Particulars of Partner/Designated Partner	Section 7(3) & (4)	File Form 4 with ROC within 30 days of the appointment as the designated partner.
Vacancy of Designated Partner	Section 9	File Form 4 with ROC within 30 days of vacancy. [*In case if no designated partner being appointed or if any time there is only one designated partner, then each partner shall be deemed to be the designated partner*]
Change in Designated Partners	Section 25(2)	File Form 4 with ROC within 30 days of changes in designated partners.
Change of Registered office	Section 13(3)	File Form 15 with ROC within 30 days of Change of Registered office.
Change of Name	Section 19	File Form 5 with ROC within 30 days of such change.
LLP agreement & Changes in LLP Agreement	Section 23	File Form 3 with ROC within 30 days of incorporation of LLP or alteration in LLP Agreement.

17. As a Practicing Company Secretary, advise your client regarding annual compliance requirement to be followed by the LLP.

[Dec. 2018 (5 Marks)]

Or

Financial Statements of the Limited Liability Partnership are not mandatorily required to be audited by a Chartered Accountant. Comment.

[June 2019 (5 Marks)]

Ans.: All LLPs registered under the LLP Act, 2008 need to file Annual Returns and Statement of Accounts for every Financial Year. It is mandatory for a LLP to file a return irrespective of whether it has done any business or not. There are four mandatory compliance requirements to be followed by LLPs which are given below.

(1) **Filing of Statement of Account & Solvency:** Every LLP shall, within a period of **6 months** from the end of each financial year, prepare a Statement of Account and Solvency in **Form No. 8** and such statement shall be signed by the designated partners of the LLP. Every LLP shall file the Statement of Account and Solvency with the ROC every year on or before 31st October.

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(2) **Audit of accounts:** As per Rule 24 of the LLP Rules, 2009, every LLP whose **turnover** exceeds, in any financial year, ₹ **40,00,000** or its **contribution** exceed ₹ **25,00,000** has to get accounts audited from a Chartered Accountant.

(3) **Filing of Annual Return:** *Please refer to answer of Question No. 7.*

(4) **Filing of Income-tax Return:** Every LLP has to file Income Tax Return every within the due date prescribed in Income-tax Act, 1961.

18. Aryan & Aarav, an LLP having turnover of ₹ 45 lakh and contribution of the partners exceeding ₹ 30 lakh in F.Y. 2018-2019 is seeking your advice in the following matters:

(*i*) Is dividend distribution tax applicable on LLP?

(*ii*) Is LLP subjected to audit? State the reason.

(*iii*) Is LLP eligible to raise loan from ABC Ltd., a foreign bank?

(*iv*) State Offences & Penalties for non-filing of financial statements under the LLP Act, 2008. [Dec. 2019(4 Marks)]

Ans.: Considering the provisions of the LLP Act, 2008 and the LLP Rules, 2009, answer to given case is as follows:

(*i*) **Dividend Distribution Tax:** A LLP is not subject to Dividend Distribution Tax (DDT).

(*ii*) **Audit of accounts:** As per Rule 24 of the LLP Rules, 2009, every LLP whose **turnover** exceeds, in any financial year, ₹ **40,00,000** or its **contribution** exceed ₹ **25,00,000** has to get accounts audited from a Chartered Accountant.

Hence, in the given case since, both the criteria has been fulfilled, Aryan & Aarav LLP shall be required to conduct audit by CA.

(*iii*) **Limitation in ECB:** LLP's are not allowed to raise External Commercial Borrowings (ECB). Hence, it cannot avail commercial loans from its foreign partners, FII's, foreign banks and any financial institution located outside India.

Hence, Aryan & Aarav LLP cannot raise loan from ABC Ltd., a foreign bank.

(*iv*) **Penalties for non-filing of financial statements:** If LLP fails to file Statement of Account & Solvency within the prescribed time, such LLP and its designated partners shall be liable to a penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 1,00,000 for the LLP and ₹ 50,000 for every designated partner.

19. Prabhat is proposing to start a new business and wants to know from you the mandatory annual compliances for an LLP and a partnership firm. [Dec. 2019 (3 Marks)]

Ans.: Annual compliances for LLP: All LLPs registered under the LLP Act, 2008 need to file Annual Returns and Statement of Accounts for every Financial Year. It is mandatory for a LLP to file a return irrespective of whether it has done any business or not. There are four mandatory compliance requirements to be followed by LLPs which are given below.

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(1) **Filing of Statement of Account & Solvency:** Every LLP shall, within a period of **6 months** from the end of each financial year, prepare a Statement of Account and Solvency in **Form 8** and such statement shall be signed by the designated partners of the LLP. Every LLP shall file the Statement of Account and Solvency with the ROC every year on or before 31st October.

(2) **Audit of accounts:** As per Rule 24 of the LLP Rules, 2009, every LLP whose **turnover** exceeds, in any financial year, ₹ **40,00,000** or its **contribution** exceed ₹ **25,00,000** has to get accounts audited from a Chartered Accountant.

(3) **Filing of Annual Return:** Every LLP shall file an annual return duly authenticated in Form 11 with the ROC within 60 days of closure of its financial year.

Certificate to the effect that annual return contains true and correct information:

(*a*) **Certificate from designated partner:** Annual return of an LLP having **turnover** up to ₹ **5 Crore** during the corresponding financial year or **contribution** up to ₹ **50 lakh** shall be accompanied with a certificate from a designated partner, other than the signatory to the annual return, to the effect that annual return contains true and correct information.

(*b*) **Certificate from PCS:** In all other cases, the annual return shall be accompanied with a certificate from a Company Secretary in practice to the effect that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.

(4) **Filing of Income-tax Return:** Every LLP has to file Income Tax Return every within the due date prescribed in Income-tax Act, 1961.

Annual compliances for partnership firm:

(1) **Tax Audit:** As per Section 44AB of the Income-tax Act, 1961, Tax Audit for partnership firm is applicable if the turnover/gross receipt exceeds ₹ 1 Crore in case of business and ₹ 50 lakh in case of profession.

(2) **Books of account:** Partnership Firms must keep and maintain such books of account and other documents as may enable the Assessing Officer to compute the total income Firm in accordance with the provisions of the Income-tax Act, 1961. As per Section 44AA, Partnership Firms carrying on business or profession has to maintain books of account in following cases:

- If his income from business or profession exceeds ₹ 1,20,000 or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds ₹ 10 lakh in any one of the 3 years immediately preceding the previous year.
- Where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed ₹ 1,20,000 or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to ₹ 10 lakh, during such previous year.

(3) **Annual Return:** In partnership there is no requirement for filing Annual Return. There is no requirement for certificate from Company Secretary.

COMPOUNDING OF OFFENCES & WINDING-UP OF LLP

20. Discuss briefly provisions relating to compounding of offences under the LLP Act, 2008.

Ans.:

- As per Section 39(1) of LLP Act, 2008, the Regional Director or any other officer not below the rank of Regional Director authorized by the Central Government may compound any offence under the Act.
- Only offence punishable *with fine only* can be compounded.
- Offence can be compounded by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.
- Compounding shall not be allowed within **3 years** from the date on which a similar offence was committed and compounded.
- Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional Director authorized by the Central Government.

21. Discuss briefly provisions relating to winding-up of LLP under the LLP Act, 2008.

Ans.: Modes of winding-up [Section 63]: LLP can be wound-up either voluntarily or by a Tribunal and LLP, so wound-up may be dissolved.

Resolution: If a LLP is to initiate winding-up voluntarily, then the LLP must pass a resolution to wind-up the LLP with approval of at least 3/4th of the total number of Partners.

Approval of the lenders: If the LLP has lenders, secured or unsecured, then the approval of the lenders would also be required for winding-up of the LLP.

Circumstances in which LLP may be wound-up by Tribunal [Section 64]: LLP maybe wound-up by the Tribunal under the following circumstances:

- The LLP decides that it shall be wound-up by the tribunal.
- There are less than two Partners in the LLP for a period of more than 6 months.
- The LLP has acted against the interest of the nation or State security or public order.
- Default is made in the filing of Annual return or Statement of Accounts & Solvency for any 5 consecutive financial years.
- The Tribunal is of the opinion that it is *just and equitable* to wind-up the LLP under section 64 of the Act.

4 CHAPTER

STARTUPS & ITS REGISTRATION

STARTUPS

1. Define a Startup.

Ans.: Startup as defined vide Notification No. G.S.R. 127(E), dated 19th February 2019 by DPIIT as:

An entity shall be considered as a Startup:

1. Up to a period of 10 years from the date of incorporation/registration, if it is incorporated as a private limited company or registered as a partnership firm or a limited liability partnership in India.
2. Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded ₹ **100 Crore**.
3. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

However, an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'

2. What do you understand by Startup and trace its evolution in India.

Or

'Startup India' imitative has been started by the government of India for creating conducive environment for startup in India. Explain the pre-conditions for determining an entity as a startup venture.

[Dec. 2018 (4 Marks)]

Ans.: Startup: A Startup is an entrepreneurial venture which is typically an emerging, fast growing business that aims to solve an unmet need by developing a viable business model around an innovative product, service, processor a platform.

A Startup is usually designed to effectively develop and validate a scalable business model.

A Startup is started by founders or entrepreneurs to search for repeatable and scalable business model.

Example of Ather Energy: Ather Energy was launched by Tarun Mehta and Swapnil Jain in year 2013 in Bangalore. Ather Energy is a maker of two-wheeler electric vehicles. In 2018, this Startup launched its flagship electric scooter, Ather 450 and e-bike Ather 340 which is set hit Indian roads. The electric scooter launched by this

Startup is gaining more and more response from the common people due increasing price of petrol and diesel.

Evolution of Startups in India:

Startup India campaign is based on an action plan aimed at promoting bank financing for Startup ventures to boost entrepreneurship and encourage start ups with jobs creation. The campaign was first announced by Honourable Prime Minister Shree Narendra Modiji in his address from the Red Fort on 15 August in year 2015.

The Government of India has announced 'Startup India' initiative for creating a conducive environment for startups in India. The various Ministries of the Government of India have initiated a number of activities for the purpose.

Eligibility for recognition of Startup: The recognition of the Startups in India is regulated *vide* notification issued by the Department for Promotion of Industry & Internal Trade (DPIIT).

An entity shall be considered as a 'Startup' –

(*a*) Up to **10 years** from the date of its incorporation/registration, if it is incorporated as a private limited company or registered as a partnership firm or LLP.

(*b*) If its turnover for any of the financial years has not exceeded ₹ **100 Crore.**

(*c*) It is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

Any entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'Startup'.

Cessation of Startup Recognition: An entity shall cease to be a Startup on completion of 10 years from the date of its incorporation/registration or if its turnover for any previous year exceeds ₹ 100 Crore.

A Startup company may cease to be a Startup as it passes various milestones, such as becoming publicly traded on the stock market in an Initial Public Offering (IPO), or ceasing to exist as an independent entity *via* merger or acquisition.

Type of Organization: The words "entity" means a private limited company as defined in the Companies Act, 2013, or a registered partnership firm registered under section 59 of the Partnership Act, 1932 or LLP under the Limited Liability Partnership Act, 2002.

Thus, Startup is an entity considered to be working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. Its aim is to develop and commercialize a new product or service or process or to significantly improve existing product or service or process that will create or add value for customers or workflow.

3. What are the highlights of the Startup Policy of the Government of India?

Ans.: Key points relating to Startups Policy of Government of India are given below:

- Single Window Clearance even with the help of a mobile application.
- ₹ 10,000 Crore fund of funds.
- Reduction in patent registration fee.

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- Modified and friendlier Bankruptcy Code to ensure 90-day exit window.
- Freedom from mystifying inspections for 3 years.
- Freedom from Capital Gain Tax for 3 years.
- Freedom from tax in profits for 3 years.
- Self-certification compliance.
- Innovation hub under Atal Innovation Mission.
- Starting with 5 lakh schools to target 10 lakh children for innovation programme.
- New schemes to provide IPR protection to startups and new firms.
- Encourage entrepreneurship.
- Stand India across the world as a startup hub.

4. Discuss briefly Benefits/Exemptions to Startups in India under the Companies Act, 2013.

Ans.: Benefits/Exemptions to Startups under the Companies Act, 2013:

(1) **Section 2(*40*) – Definition of financial statement:** The financial statement in relation to a private company which is Startup may not include the cash flow statement.

(2) **Section 54 – Issue of sweat equity shares:** A Startup company may issue sweat equity shares not exceeding **50% of its paid-up capital** up to **10 years** from the date of its incorporation or registration.

(3) **Section 62 – Further issue of share capital:** For the purposes of Section 62(1)(*b*), "Employee" does not include:

(*i*) An employee who is a promoter or a person belonging to the promoter group.

(*ii*) A director who either himself or through his relative or through any-body corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company.

The aforementioned conditions shall not apply to a Startup up to 10 years from the date of its incorporation or registration.

(4) **Section 73 – Prohibition on acceptance of deposit from public:** Deposit does not include an amount ₹ 25 lakh or more received by a Startup company, by way of a convertible note (*convertible into equity shares or repayable within a period not exceeding 10 years from the date of issue*) in a single tranche, from a person.

(5) **Section 73 – Prohibition on acceptance of deposit from public read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014:** The maximum limit in respect of deposits to be accepted from members shall not apply to a private company which is a Startup, for 10 years from the date of its incorporation.

(6) **Section 73 – Prohibition on acceptance of deposit from public:** Clauses (*a*) to, (*e*) of Section 73(2) shall not apply to a private company which is a Startup, for 5 years from the date of its incorporation.

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(7) **Section 92 – Annual Return:** In relation to a private company, which is a Startup, the annual return shall be signed by the Company Secretary, or where there is no Company Secretary, by the director of the company.

(8) **Section 173 – Meetings of Board:** A private company, which is a Startup, shall be deemed to have compiled with the provisions of Section 173, if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meeting is not less than 90 days

(9) **Section 446B – Lesser penalties:** If penalty is payable for non-compliance of any of the provisions of Companies Act, 2013 by a Startup company or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, shall be liable to a penalty which shall not be more than one half of the penalty specified in such provisions subject to a maximum of ₹ 2 **lakh** in case of a company and ₹ 1 **lakh** in a case of an officer who is in default or any other person.

5. Discuss briefly various tax exemptions available to Startups in India.

Ans.: Following tax exemptions for the Startups had been introduced that was made effective from 2017-18. The proposed incentives and exemptions are:

(1) **Tax exemption on profits under Section 80-IAC:** The Inter-Ministerial Board of Certification is a Board set up by Department for Promotion of Industry & Internal Trade [DPIIT] which validates Startups for granting tax related benefits.

The Startup incorporated after 1.4.2016 but before the 1.4.2022 is eligible to apply to the Inter-Ministerial Board for a deduction of an amount equal to **100% of the profits and gains** derived from an eligible business by an eligible startup for **3 consecutive assessment years out of 10 years** beginning from the year in which the eligible Startup is incorporated. However, the annual turnover must not exceed ₹ 100 Crore in the previous year relevant to the assessment year for which deduction is claimed.

(2) **Tax exemption on investments above Fair Market Value:** DPIIT Recognized Startups are exempt from tax under Section 56(2)(*viib*) of the Income-tax Act when such a Startup receives any consideration for issue of shares which exceeds the Fair Market Value of such shares.

The Startup has to file a duly signed declaration in Form 2 to DPIIT to claim above exemption.

(3) **Exemption from tax on LTCG:** Exemption from tax on long-term capital gain if such long-term capital gain is invested in a fund notified by Central Government. The maximum amount that can be invested is Rs. 50 lakh.

(4) **Exemption from tax on capital gains arising out of sale of residential property:** Exemption from tax on capital gains arising out of sale of residential house or a residential plot of land if the amount of net consideration is invested in prescribed stake of equity shares of eligible Startup for utilizing the same for purchase of specified asset:

- The condition of minimum holding of 50% of share capital or voting rights in the Startup relaxed to 25%.

- The period of extension of capital gains arising from for transfer of residential property for investment in Startups has been extended up to 31st March 2022.

(5) **Carry forward of losses:** Startups can carry forward their losses on satisfaction of any one of the following two conditions:

- Continuity of 51% shareholding/voting power *or*
- Continuity of 100% of original shareholder.

6. Amar is young entrepreneur willing to establish an incubator setup in the space of IT, software development, cloud computing or hardware/software maintenance. Advice Amar regarding benefits available to entrepreneurs in establishing Startups. [Dec. 2018 (5 Marks)]

Or

"Startups 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 Startups. [June 2022 (4 Marks)]

Ans.: To promote growth and help Indian economy, following benefits are being given to entrepreneurs establishing startups.

(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 up 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 trademarks. They will provide high quality Intellectual Property Right Services including fast examination of patents at lower fees. The government will bear all facilitator fees and the startup will bear only the statutory fees. They will enjoy 80% reduction in cost of filing patents.

(3) **Easy access to Funds:** ₹ 10,000 Crore fund is set-up by 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 for 3 Years:** Startups will be exempted from income tax for 3 years provided they get a certification from Inter-Ministerial Board (IMB).

(5) **Apply for tenders:** Startups can apply for Government Tenders. They are exempted from the "prior experience/turnover" criteria applicable for normal companies answering to Government Tenders.

(6) **R & D facilities:** Seven new Research Parks will be set up to provide facilities to startups in the R & D sector.

(7) **No time-consuming compliances:** Various compliances have been simplified for startups to save time and money. Startups shall be allowed to self-certify compliance (through the Startup mobile app) with 9 labour and 3 environment laws.

(8) **Tax saving for investors:** People investing their capital gains in the venture funds setup by Government will get exemption from capital gains. This will help startups to attract more investors.

(9) **Choose your investor:** The Startups will have an option to choose between the VCs, giving them the liberty to choose their investors.

(10) **Easy exit:** In case of exit, a startup can close its business within 90 days from the date of application of winding-up.

(11) **Meet other entrepreneurs:** Government has proposed to hold 2 startup fests annually both nationally and internationally to enable the various stakeholders of a startup to meet. This will provide huge networking opportunities.

Therefore, Amar is advised to establish an incubator set up in the space of IT, software development, cloud computing or hardware/software maintenance in order to get the maximum benefits.

7. ABC Private Ltd., a Startup company, received an amount of ₹ 25 lakh in single tranche from an investor by way of a Note, convertible into equity shares (convertible after 3 years but within 5 years from the date of issue). CFO of the company was of the view that the said amount is not a deposit. In the light of the statutory provisions, explain whether the view of the CFO is correct? [June 2019 (5 Marks)]

Ans.: The Companies (Acceptance of Deposit) Rules, 2014 have been amended to provide that an amount of ₹ 25 lakh or more received by a Startup company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 5 years from the date of issue) in a single tranche, from a person shall not be treated as a deposit.

Further, as per the exemption notification issued by the MCA, the provisions of clauses (*a*) to (*e*) of Section 73(*2*) of the Companies Act, 2013 shall not apply to a Startup company for 5 years from the date of incorporation.

In view of the said provision, the view of the CFO that the amount of ₹ 25 lakh received from an investor, by way of Note convertible into equity after 3 years but before 5 years is not a deposit, is correct.

8. Pawan incorporated a Private Ltd. Company in the year 2016 for carrying on the business of supplying freshly chopped vegetables to various food chains in and around New Delhi NCR. He wants his entity to be recognized as a Startup. Advise the process to be followed by him for recognition of his company as a Startup. [Dec. 2019 (4 Marks)]

Ans.: The recognition of the startups in India is regulated *vide* notification issued by the Department for Promotion of Industry and Internal Trade (DPIIT).

Eligibility for Recognition of Startup: *Please refer to answer of Question No. 1.*

Procedure of Recognition: Process of recognition of an eligible entity as Startup is given below:

(*a*) A Startup shall make an online application over the mobile app or portal set-up by the DPIIT.

(*b*) The application shall be accompanied by —

- A copy of Certificate of Incorporation or Registration.
- A write-up about the nature of business highlighting how it is working towards innovation, development or improvement of products

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or processes or services, or its scalability in terms of employment generation or wealth creation.

Decision of DPIIT: The DPIIT may, after calling for such documents or information and making such enquires, as it may deem fit –

(*a*) Recognize the eligible entity as Startup *or*

(*b*) Reject the application by providing reasons.

9. Crowd Funding is a recent phenomena being practiced for getting seed funding usually through the internet. Elucidate. [Dec. 2020 (4 Marks)]

Ans.: Crowd Funding – Meaning: Crowd Funding 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".

Process of raising money 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.

Consultation Paper on Crowd funding: SEBI in 2014, even rolled out a 'Consultation Paper on Crowd funding in India' proposing a framework in the form of Crowd funding to allow Startups and SMEs to raise early stage capital in relatively small sums from a broad investor base.

The Consultation Paper defined Crowd funding as solicitation of funds (small amount) from multiple investors through a web-based platform or social networking site for a specific project, business venture or social cause. However, SEBI not issued any further regulations in this regard.

10. 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. [June 2023 (5 Marks)]

Ans.: Meaning and importance of seed funding:

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

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

Seed funding helps in business transformation: Seed funding permits exploration of the business idea and converting it into a viable product or service that

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further attracts venture capitalists. A business founder must be clear on how to utilize seed capital in the most optimum manner to ensure smooth transition to the advanced stage of the business.

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

Less paperwork and other formalities: The paperwork involved in seed funding is relatively less and straightforward, compared to advanced rounds of funding.

Even the legal fees required are also quite less as compared to the seed equity.

The interest rates too are usually lower and there are mostly no restrictions in the manner of business working as it is still in the nascent stage.

Financing options in seed funding: Financing is generally of two types *i.e.* (*a*) Equity Financing; or (*b*) Debt Financing.

11. PQ Pvt. Ltd. is the newly incorporated company engaged in manufacturing of machinery parts proposes to raise the funds through Private Equity and Angel Investors. Explain these equity financing options available to the company. [June 2021 (4 Marks)]

Ans.: Startups are usually equity financed/funded by way of a venture capital/private equity investors and/or angel investors.

(*i*) **Venture Capitalist/Private Equity:** Venture Capital/Private Equity is often the first large investment a Startup can expect to receive.

Convertible instruments are usually the preferred option and most commonly used securities for investment which includes compulsory convertible preference shares and compulsory convertible debentures.

The investor and Startup will normally enter into a non-binding offer based on the preliminary valuation of the Startup usually followed with a financial, legal and technical due diligence on the Startup as required by the investors.

Due diligence will help the investors to finalize the representation and warranties and also to identify conditions precedent to the completion of investments and conditions subsequent in the aforesaid transaction documents.

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

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

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

(*a*) Which complies with the criteria regarding the age of the venture capital undertaking/Startup issued by the Department of

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Industrial Policy & Promotion under the Ministry of Commerce and Industry, Government of India.

(*b*) Which have a turnover of less than ₹ 25 Crore.

(*c*) Which are not promoted or sponsored by or related to an industrial group whose group turnover exceeds ₹ 300 Crore.

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

(2) **Investment limits:** Investment by an angel fund in any venture capital undertaking shall not be less than ₹ **25 Lakh** and shall not exceed ₹ **10 Crore**.

(3) **Lock-in period:** Investment by an angel fund in the venture capital undertaking shall be locked in for a period of one year.

(4) **No investment in associates:** Angel funds shall not invest in associates.

(5) **Prohibition on investments:** Angel funds shall not invest more than 25% of the total investments under all its schemes in one venture capital undertaking

(6) **Overseas Investments:** An angel fund may also invest in the securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the RBI and the SEBI from time to time.

12. Explain the unconventional modes of financing options for Startups which are becoming popular in India. [Dec. 2021 (4 Marks)]

Ans.: Following are the unconventional modes of financing options for Startups which are becoming popular in India:

(*a*) **Crowd Funding:** *Please refer to answer of Question No. 9.*

(*b*) **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).

13. Radha Furnishing Private Ltd., a Start-up Company wants to issue sweat equity shares to its employees. Is there any provision regarding it? Explain. [Dec. 2022 (4 Marks)]

Ans.: Sweat equity shares: Sweat equity shares means equity shares issued by a company to its directors or employees at a discount or for consideration, other than

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cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Issue of sweat equity shares by Startup Company: As per the Companies (Share Capital & Debentures) Amendment Rules, 2020, a Startup Company, may issue sweat equity shares not exceeding 50% of its paid-up share capital up to 10 years from the date of its incorporation or registration. [*Earlier the time period was up to 5 years from the date of incorporation or registration*]

Thus, Radha Furnishing Private Ltd., a Start-up Company may issue sweat equity shares to its employees subject to above stated provisions.

14. Define the term "Unicorn Startups". [Dec. 2022 (4 Marks)]

Ans.: A unicorn is a term used to indicate a privately held Startup company with a valuation of over **$1 billion**.

For a unicorn, the journey starts from the growth stage, they are disruptors which start out in an incredibly unique way to solve an everybody problem. The reasons these Startups become so successful is because all of their solutions fill a specific need in a new and different way.

The Indian Startup ecosystem has developed dynamically in recent times. Two decades back, there were only few active investors and limited number of support organizations, such as incubators and accelerators. However, in the past decade, there has been a significant increase in both investment activity and infrastructure facilities to provide the much-needed impetus to the expansion of the unicorn tribe.

In 2021 itself, India witnessed the birth of 44 unicorns with a total valuation of $ 93 Bn. Bangalore, Delhi NCR, and Mumbai continue to be the top cities preferred as unicorn headquarters in 2021. Unconventional sectors and sub-sectors marked an entry into the unicorn space including, NBFCs, Conversational Messaging, Crypto Currency Exchanges, D2C, Cloud Kitchens and many others. Indian unicorns are also exploring the public listing avenues as a next step to realize the growth potential. Some one of big unicorn names that offered an IPO includes Zomato, Nykaa, Policy Bazaar, Paytm and Freshworks.

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5 MICRO, SMALL & MEDIUM ENTERPRISES

INTRODUCTION

1. Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy. Explain.

Ans.:

- **MSME as a highly vibrant and dynamic sector:** Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades.
- **Role of MSMEs:** MSMEs not only play crucial role in providing large employment opportunities at comparatively lower capital cost than large industries but also help in industrialization of rural & backward areas, thereby, reducing regional imbalances, assuring more equitable distribution of national income and wealth. MSMEs are complementary to large industries as ancillary units and this sector contributes enormously to the socio-economic development of the country.
- **MSMED Act, 2006:** The Government of India has enacted the Micro, Small & Medium Enterprises Development Act, 2006 in terms of which the definition of micro, small and medium enterprises is specified.
- **Purpose of the MSMED Act, 2006:** The Act was notified to address policy issues affecting MSMEs as well as the coverage and investment ceiling of the sector. The Act seeks to facilitate the development of these enterprises as also enhance their competitiveness. It provides the first-ever legal framework for recognition of the concept of "enterprise" which comprises both manufacturing and service entities. It defines medium enterprises for the first time and seeks to integrate the three tiers of these enterprises, namely, micro, small and medium.

MICRO, SMALL & MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

2. State the functions of the National Board under the Micro, Small & Medium Enterprises Development Act, 2006.

Ans.: National Board [Section 3]: The Central Government shall establish a board known as National Board for Micro, Small & Medium Enterprises. Its head office shall be in New Delhi.

Functions of the Board [Section 5]: The main functions of the board are as follows:

- To examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises.
- To make recommendations on matters relating to promotion and development of micro, small and medium enterprises or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises.
- To advise the Central Government on the use of the Fund or Funds constituted under section 12 of MSMED Act, 2006.

3. How enterprises are classified under the Micro, Small & Medium Enterprises Development Act, 2006?

Or

XYZ Pvt. Ltd., is engaged in manufacture of engineering components. The Company has investment of ₹ 3 Crore and Turnover of ₹ 25 Crore. The Company wants to know their category as per new definition of MSME. Will your answer differ, if XYZ Pvt. Ltd. is in service sector with the aforesaid limits of investment and turnover? [June 2021 (3 Marks)]

Ans.: Classification of Enterprises: Union Ministry MSMEs has issued Gazette notification to pave way for implementation of the upward revision in the definition and criteria of MSMEs. Revised Classification applicable w.e.f. 1st July 2020. Now, there will be no difference between manufacturing and service sectors. Also, a new criterion of turnover is added.

As per new definition manufacturing and service sectors will be classified as given below:

Micro	**Investment in Plant & Machinery or Equipment:** Not more than ₹ 1 Crore *and* **Annual Turnover:** Not more than ₹ 5 Crore.
Small	**Investment in Plant & Machinery or Equipment:** Not more than ₹ 10 Crore *and* **Annual Turnover:** Not more than ₹ 50 Crore.
Medium	**Investment in Plant & Machinery or Equipment:** Not more than ₹ 50 Crore *and* **Annual Turnover:** Not more than ₹ 250 Crore.

MSME includes all establishment engaged either in manufacturing or rendering services but it does not include those enterprise which are engaged only in trading activities.

In view of above, answer to given case is as follows:

(*i*) XYZ Pvt. Ltd. can be categorized as 'Small Enterprise' as its investment is not more than ₹ 10 Crore and turnover is not more than ₹ 50 Crore.

(*ii*) If XYZ Pvt. Ltd. is in service sector the answer will remain same and still it can be categorized as 'Small Enterprise'.

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4. ABC Pvt. Ltd. is engaged in the business of manufacturing of machinery parts. The company has the following investment in fixed assets:

Plant and Machinery : ₹ 115 lakh (including second hand machinery of ₹ 25 Lakh and pollution control equipment of ₹ 20 lakh)

Land and Building : ₹ 100 lakh

Turnover (including export turnover of ₹ 150 lakh) : ₹ 600 lakh

Explain with details whether ABC Pvt. Ltd. comes under Micro or Small or Medium Enterprise category as per the new definition of MSME *vide* Press Release dated 13th May, 2020 of Ministry of Finance.

[June 2023 (5 Marks)]

Ans.: MSME stands for Micro, Small and Medium Enterprises.

As per new definition MSME in manufacturing and service sectors will be classified as given below:

Micro	**Investment in Plant & Machinery or Equipment:** Not more than ₹ 1 Crore *and* **Annual Turnover:** Not more than ₹ 5 Crore.
Small	**Investment in Plant & Machinery or Equipment:** Not more than ₹ 10 Crore *and* **Annual Turnover:** Not more than ₹ 50 Crore.
Medium	**Investment in Plant & Machinery or Equipment:** Not more than ₹ 50 Crore *and* **Annual Turnover:** Not more than ₹ 250 Crore.

Calculation of Investment in Plant & Machinery or Equipment:

- The expression "plant and machinery or equipment" of the enterprise, shall have the same meaning as assigned to the plant and machinery in the Income-tax Rules, 1962 and shall include all tangible assets (*other than land and building, furniture and fittings*).
- The purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand, shall be taken into account excluding GST, on self-disclosure basis, if the enterprise is a new one without any ITR.
- The cost of certain specified items shall be excluded from the calculation of the amount of investment in plant and machinery *i.e.* in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

Calculation of Turnover:

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

Considering above provisions, the investment of ABC Pvt. Ltd. in Plant & Machinery and Turnover is calculated as shown below:

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Particulars	₹
Plant & Machinery (*second hand machinery will not be excluded*)	1,15,00,000
Pollution control equipment	(20,00,000)
Land & building (*will not be considered*)	–
	95,00,000

Particulars	₹
Turnover	6,00,00,000
Export turnover	(1,50,00,000)
	4,50,00,000

Thus, ABC Pvt. Ltd. will be classified as Micro Enterprises as its investment in Plant & Machinery is below ₹ 1 crore and its turnover is below ₹ 5 crore.

5. Write a short note on: Memorandum of MSME

Ans.: Memorandum of micro, small and medium enterprises [Section 8]:

- Any person who intends to Establish –
  - (*a*) A micro or small enterprise, may, *at his discretion* or
  - (*b*) A medium enterprise engaged in providing or rendering of services may, at his discretion or
  - (*c*) A medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development & Regulation) Act, 1951, shall file the memorandum of micro, small or medium enterprise with such authority as may be specified by the State Government or the Central Government.
- The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.
- The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified, by notification, by the Central Government.
- The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.
- The specified authorities shall follow, the procedure notified by the Central Government.

6. Ankush is running a small factory in industrial area of Pune District. In order to avail various benefits available under various laws and policies framed by the Central and State Governments he wants to register his factory as Small Enterprise. Advice him regarding the process to be followed for such registration.

Ans.: MSME stands for micro, small and medium enterprises.

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As per new definition MSME in manufacturing and service sectors will be classified as given below:

Micro	**Investment in Plant & Machinery or Equipment:** Not more than ₹ 1 Crore *and* **Annual Turnover:** Not more than ₹ 5 Crore.
Small	**Investment in Plant & Machinery or Equipment:** Not more than ₹ 10 Crore *and* **Annual Turnover:** Not more than ₹ 50 Crore.
Medium	**Investment in Plant & Machinery or Equipment:** Not more than ₹ 50 Crore *and* **Annual Turnover:** Not more than ₹ 250 Crore.

MSME enterprises are the backbone of any economy and are engine of economic growth, promoting equitable development for all. Therefore, to support and promote MSMEs, the Government of India through various subsidies, schemes and incentives promote MSMEs through the MSMED Act. To avail the benefits under the MSMED Act from Central or State Government and the Banking Sector, MSME Registration is required.

Micro, Small and Medium sized enterprises in both the manufacturing and service sector can obtain MSME Registration under the MSMED Act. Though the MSME registration is not statutory, it is beneficial for business at it provides a range of benefits such as eligibility for lower rates of interest, excise exemption scheme, tax subsidies, power tariff subsidies, capital investment subsidies and other support.

Registration Process: Registration Process of Micro & Small Enterprises is as follows:

- The form for registration shall be as provided in the Udyam Registration portal.
- There will be no fee for filing Udyam Registration.
- Aadhaar number shall be required for Udyam Registration.
- The Aadhaar number shall be of the proprietor in the case of a proprietorship firm, of the managing partner in the case of a partnership firm and of a Karta in the case of HUF.
- In case of a Company or LLP or a Co-operative Society or a Society or a Trust, the organization or its authorized signatory shall provide its GSTIN and PAN along with its Aadhaar number.
- In case an enterprise is duly registered as an Udyam with PAN, any deficiency of information for previous years when it did not have PAN shall be filled up on self-declaration basis.
- No enterprise shall file more than one Udyam Registration. However, any number of activities including manufacturing or service or both may be specified or added in one Udyam Registration.
- Whoever intentionally misrepresents or attempts to suppress the self-declared facts and figures appearing in the Udyam Registration or updation process shall be liable to such penalty as specified under section 27 of the Act.

Some important points relating to registration:

- An enterprise for the purpose of this process will be known as Udyam and its Registration Process will be known as 'Udyam Registration'.
- A permanent registration number will be given after registration.
- After completion of the process of registration, a certificate will be issued online.
- This certificate will have a dynamic QR Code from which the web page on our Portal and details about the enterprise can be accessed.
- There will be no need for renewal of Registration. No enterprise shall file more than one Udyam Registration. However, any number of activities including manufacturing or service or both may be specified or added in one Registration.

7. What are the benefits of Udyam Registration?

Ans.: Benefits of Udyam Registration are as follows:

- It will be a permanent registration and basic identification number for an enterprise.
- MSME Registration is paperless and based on self-declaration.
- There will be no need for renewal of Registration.
- Any number of activities including manufacturing or service or both may be specified or added in one Registration.
- The Udyam Registration may also help MSMEs in availing the benefits of Schemes of Ministry of MSMEs such as Credit Guarantee Scheme, Public Procurement Policy, additional edge in Government Tenders & Protection against delayed payments etc.
- Becomes eligible for priority sector lending from banks.

8. UV Pvt. Ltd. wants to apply for Udyog Aadhaar. The Company seeks your advice on the criteria for making application for Udyog Aadhaar under the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006. Advise UV Pvt. Ltd. [Dec. 2021 (3 Marks)]

Ans.: Udyam Registration: Government of India notified certain criteria for classifying the enterprises as micro, small & medium enterprises and specifies the form and procedure for filing the memorandum (*known as Udyam Registration*).

Classification of Enterprises: *Please refer to answer of Question No. 3.*

Any person who intends to establish a micro, small or medium enterprise may file Udyam Registration online in the Udyam Registration portal.

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 to follow aforesaid criteria for making application for Udyam Registration Certificate under the MSMED Act, 2006.

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NSIC REGISTRATION

9. Bermuda Sports Manufacturing Unit, a Micro and Small Enterprise, seek registration under the Single Point Registration Scheme of NSIC. State the various benefits/facilities available to the registered units.
[June 2019 (3 Marks)]

Or

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. **[Dec. 2021 (3 Marks)]**

Or

Explain the benefits extended to Micro & Small Enterprises (MSEs) for having valid NSIC registration. **[June 2023 (3 Marks)]**

Ans.: NSIC Registration: NSIC enlists Micro & Small Enterprises (MSEs) under Single Point Registration scheme (SPRS) for participation in Government Purchases. The units enlisted under Single Point Registration Scheme of NSIC are eligible to get the benefits under Public Procurement Policy for Micro & Small Enterprises (MSEs) Order 2012 as notified by the Government of India, Ministry of Micro Small & Medium Enterprises, New Delhi. The enlistment under SPRS is completely online.

Both manufacturing and service provider enterprises having MSME or Udyog Aadhaar registration are eligible for obtaining NSIC registration. To obtain registration, enterprises having MSME or Udyog Aadhaar registration can apply online or by submitting an application at one of the NSIC offices. On submission of the application, the NSIC forwards the application to a zonal branch or sub-branch office nearest to the applicant for completing technical inspection of the unit and forwarding of recommendation for NSIC registration. On receiving the inspection report, NSIC grants registration to the MSME unit.

Benefits extended to MSEs having valid registration:

- 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 per cent shall also be allowed to supply a portion up to 25% of requirement by bringing down their price to L1 Price, where L1 is Non-MSEs.
- Consortia facility for Tender Marketing.
- 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. Out of annual requirement of 25% procurement from MSEs, 4% is earmarked for units owned by Schedule Caste/Schedule Tribes and 3% is earmarked for the units owned by Women entrepreneurs.
- SPRS registered units are integral part of the supply chain to Government.
- In addition to the above, 358 items are also reserved for exclusive purchase from SSI Sector.

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MSME SCHEME

10. Name any eight MSME Scheme implemented by the Central Government.

Ans.: MSMEs are amongst the strongest drivers of economic development, innovation and employment. Constant efforts are being made towards upliftment of MSMEs under "Self Reliant India" through various schemes of MSMEs. Following are the major MSME schemes implemented by the Government of India:

- Prime Minister's Employment Generation Programme (PMEGP)
- 2nd Loan for Up-gradation of the existing PMEGP/Mudra Units
- Credit Guarantee Scheme For Micro & Small Enterprises (CGTMSE)
- Micro & Small Enterprises Cluster Development Programme (MSE-CDP) Scheme
- Scheme of Fund for Regeneration of Traditional Industries (SFURTI)
- Entrepreneurship & Skill Development Programme (ESDP) Scheme
- Assistance to Training Institutions (ATI) Scheme
- Coir Vikas Yojana – Umbrella Scheme (Skill Upgradation and Mahila Coir Yojana)
- Procurement And Marketing Support (PMS) Scheme
- International Cooperation (IC) Scheme
- National SC-ST Hub Scheme
- A Scheme for Promotion of Innovation, Rural Industries and Entrepreneurship (ASPIRE)
- Credit Guarantee Scheme for Subordinate Debt (CGSSD) for Stressed MSMES
- Self reliant India (SRI) Fund
- MSME Sambandh

11. Write a short note on: Prime Minister's Employment Generation Programme

Ans.:

- Prime Minister's Employment Generation Programme (PMEGP) aims to provide financial assistance to set up self-employment ventures and generate sustainable employment opportunities in rural as well as urban areas.
- PMEGP Scheme also aims to generate sustainable and continuous employment opportunities to rural and unemployed youth as well as prospective traditional artisans and thereby halt occupational migration.
- The scheme is applicable to all individuals above the age of 18 years.
- The scheme is designed in such a way that the own contribution of the beneficiary is 10% of the project cost in case of general category and 5% of the project cost in case of special category (SC/ST/OBC/PH/Women/Ex Servicemen/NER) Beneficiaries.
- If the application for loan is approved, then the banks sanction and release the balance amount of 90% to 95% of the total project cost suitably for setting-up of the units by the beneficiaries.

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12. Write a short note on: Entrepreneurship & Skill Development Programme (ESDP) Scheme

Ans.: ESDP scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country. It is applicable to all the aspiring and existing entrepreneurs. It facilitates entrepreneurship/self-employment awareness and motivation to different sections of the society including SC/ST/Women, differently abled, Ex-servicemen and BPL persons as career options. Entrepreneurship & Skill Training in Agro Based Products, Hosiery, Food & Fruit Processing Industries, Carpet Weaving, Mechanical Engineering Workshop/Machine Shop, Heat Treatment, Electroplating, Basic/Advance Welding/Fabrication/Sheet metal work, Basic/Advance Carpentry, Glass & Ceramics etc. is the main target of the scheme. The scheme make provision for management capacity building Training to existing entrepreneurs and their supervisory staff in Industrial Management, Human Resource Management, Marketing Management, Export Management/ Documentation &Procedures, Materials Management, Financial/Working Capital Management, Information Technology, Digital Marketing, Quality Management/ QMS/ISO 9000/EMS, WTO, IPR, Supply Chain Management, Retail Management, Logistics Management etc. The scheme widens the base of entrepreneurship by development, achievement, motivation and entrepreneurial skill to the different sections of the society.

13. Write a short note on: MSME Sambandh

Ans.: MSME Sambandh Portal is launched as the Public Procurement Portal with the objective to monitor the implementation of the Public Procurement from MSEs by Central Public Sector Enterprises. The Public Procurement Policy for Micro and Small Enterprises (MSME) order 2012 has mandated every Central Ministry/ Department/PSU shall set an annual goal for procurement from the MSE sector at the beginning of the year with the objective of achieving an overall procurement goal of minimum 25% of the total annual purchases from the products or services produced or rendered by MSEs. Out of 25% target of annual procurement 4% is exclusively reserved for MSEs owned by SC/ST and 3% for MSEs owned by Women entrepreneurs.

MICRO & SMALL ENTERPRISES FACILITATION COUNCIL

14. Ramakant is running a small factory at Pune and he sold some goods to Ketan for ₹ 5,00,000. Later dispute arose and Ketan refused to make the payment to Ramakant. Advise Ramkant keeping in view the provisions of the Micro, Small & Medium Enterprises Development Act, 2006 as to how matter can be decided by making reference to Micro & Small Enterprises Facilitation Council.

Ans.: Recovery of amount due [Section 17]: For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest.

Reference to Micro & Small Enterprises Facilitation Council [Section 18]:

(1) **Who can make reference to MSE Facilitation Council:** Any party to a dispute may, with regard to any amount due, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) **Conciliation:** On receipt of a reference, the Council shall either itself conduct conciliation in the matter or seek the assistance of any Institution or Centre providing Alternate Dispute Resolution services for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration & Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under that Act.

(3) **Arbitration:** Where the conciliation initiated is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any Institution or Centre providing Alternate Dispute Resolution services for such arbitration and the provisions of the Arbitration & Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in section 7(*1*) of that Act.

(4) **Who can act as Arbitrator or Conciliator:** The MSE Facilitation Council or the Centre providing Alternate Dispute Resolution services shall have jurisdiction to act as an Arbitrator or Conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) **Time limit for deciding dispute:** Every reference made under this section shall be decided within a period of 90 days from the date of making such a reference.

Establishment of MSE Facilitation Council [Section 20]: The State Government shall, by notification, establish one or more Micro & Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

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18. Chote Pvt. Ltd. (MSE) sold some goods of ₹ 4,00,000 to Big Ltd. Later dispute arose between parties as to quality of goods supplied and Big Ltd. refused to make payment. Chote Pvt. Ltd. made to reference to Micro & Small Enterprises Facilitation Council. The Council conducted conciliation proceeding which failed and the matter was decided by arbitration proceedings by which Council passed order directing Big Ltd. to pay ₹ 3,50,000 to Chote Pvt. Ltd. Aggrieved by the decision of the Micro & Small Enterprises Facilitation Council, the Big Ltd. moved to Court to contest the case. Is the action of the Big Ltd. correct in light of provisions of the Micro, Small & Medium Enterprises Development Act, 2006? Give your views and suggest to the management of the Big Ltd. the action to be initiated.

Ans.: Application for setting aside decree, award or order [Section 19]: No application for setting aside any decree, award or other order made either by the Council itself or by any Institution or Centre providing Alternate Dispute Resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant (*not being a supplier*) has deposited with it 75% of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such Court.

However, pending disposal of the application to set aside the decree, award or order, the Court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

Thus, buyer (Big Ltd.) can contest the case decided by the Micro & Small Enterprises Facilitation Council before the Court. The Court will entertain the application of Big Ltd. if it deposit ₹ 2,62,500 [3,50,000 × 75%].

16. State the provisions relating to composition of Micro & Small Enterprises Facilitation Council under the Micro, Small & Medium Enterprises Development Act, 2006.

Ans.: Composition of Micro and Small Enterprises Facilitation Council [Section 20]:

(1) The MSE Facilitation Council shall consist of not less than 3 but not more than 5 members to be appointed from amongst the following categories, namely:

(*a*) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or micro, small and medium enterprises.

(*b*) One or more office-bearers or representatives of associations of micro or small industry or enterprises in the State.

(*c*) One or more representatives of banks and financial institutions lending to micro or small enterprises.

(*d*) One or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

(2) The person appointed under clause (*i*) shall be the Chairperson of the MSE Facilitation Council.

(3) The composition of the MSE Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government.

6 CONVERSION OF BUSINESS ENTITIES

PROVISIONS RELATING TO CONVERSION

1. State the provisions relating to conversion of company as contained in the Companies Act, 2013.

Ans.: As per Section 13 of the Companies Act, 2013, approval of the Central Government is not necessary if the change relates to the addition or deletion of the word 'Private' to the name of the company consequent to the conversion of a private company into a public company and *vice versa*.

Alteration of Articles for conversion of private company to public company and *vice versa* [Section 14]: Subject to the provisions of the Act and the conditions contained in its memorandum, a company may, by a special resolution, alter its Articles including alterations having the effect of conversion of –

(*a*) Private company into a public company or

(*b*) Public company into a private company.

Where a company being a private company alters its articles in such a manner that it no longer include the restrictions and limitations which are required to be included in the articles of a private company, the company shall, as from the date of such alteration, cease to be a private company.

Central Government approval: Any alteration having the effect of conversion of a *public company* into a *private company* shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed.

Filing with ROC: Every alteration of the articles and a copy of the order of the Central Government approving the alteration shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of 15 days in such manner as may be prescribed, who shall register the same.

Conversion of companies already registered [Section 18]:

- **Conversion:** A company of **any class** registered under the Act may convert itself as a company of **other class** by alteration of MOA and AOA of the company.
- **Issue of new certificate of registration:** Where the conversion is required, the Registrar shall on an application made by the company, after satisfying that the required provisions have been complied with, close the former registration of the company and after registering the documents, issue a certificate of incorporation in the same manner as its first registration.

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- **Effect of conversion:** The registration of a company shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

CONVERSION OF PRIVATE COMPANY INTO PUBLIC COMPANY

2. Tuff Ltd. is a private limited company, which was registered in the year 2001. After 20 years of existence as a private company, the said company now wants to convert itself into a public limited company. Is it possible? If yes, explain the procedure to be adopted to give effect to decision of the Board of directors of the company. [Dec. 2009 (6 Marks)]

Ans.: Procedure for conversion of private company into a public company: Following procedure for conversion of a private company into a public company is applicable:

- **Board meeting:** Convene a Board Meeting to take necessary decisions to fix the time, place and agenda for convening a General Meeting of members. Also authorize Company Secretary or Director of the company to issue notice of the meeting.
- **Notice of general meeting:** Issue Notice at least 21 clear days of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such meeting.
- **Holding of General Meeting & passing of resolutions:**
  - Hold the General meeting as scheduled and pass the necessary special resolutions.
  - Pass **special resolution** to amend the Name Clause in the MOA by removing the word 'Private'.
  - Pass a **special resolution** deleting from its articles the restricting clauses of a private company. Similarly, all other clauses in the articles which applies to a private company should be deleted and those which apply to public companies should be inserted such as increasing the number of shareholders to at least 7 and number of directors to at least 3.

    These resolutions will be passed clause by clause.
- **Filing with ROC:**
  - File **Form MGT-14** with ROC for passing special resolution within 30 days.
  - For effecting the conversion of a private company into a public company, the application shall be filed in **Form INC-27** with prescribed fee.

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- **Registration of documents by ROC:** On receipt of the order, the documents will be filed with the ROC along with a copy of the revised Articles and the ROC will register the same.
- On registration by the ROC the process will be complete.

CONVERSION OF PUBLIC COMPANY INTO PRIVATE COMPANY

3. BS & Co. Ltd. is registered as a public company. The shareholding pattern of the company is as under:

Category	*Nos.*
Directors and their relatives	144
Employees	72
Ex-employees (shares were allotted when they were employees)	36
Twenty four couples holding shares jointly in the name of husband & wife (24 × 2)	48
Others	24
	324

The Board of Directors of the Company proposes to convert it into a private company. Advise the Board of directors about the steps to be taken for conversion into a private company including reduction in the number of members, if necessary, as per the Companies Act, 2013.

Ans.: As per Section 2(*68*), a private company means a company, which has a minimum paid-up capital as may be prescribed, **and by its articles:**

(*a*) Restricts the right to transfer its shares;

(*b*) Limits the number of its members to 200 excluding past and present employee;

(*c*) Prohibits any invitation to the public to subscribe for any security.

Note: Joint holder of shares should be treated as a single member. The words 'Private Ltd.' must be added at the end of its name by a private limited company.

In given case the existing members will be counted as follows for the purpose of converting into private company.

Category	*Reason*	*Nos.*
Directors & their relatives	-	144
Employees	Present employees will be excluded	-
Ex-employees	Past employees will be excluded	-
Twenty four couples	Joint holder of shares should be treated as a single member.	24
Others	-	24
		192

Since the numbers of members are below 200 there is no need to reduce the number of members.

Procedure for conversion of public company into a private company: Following procedure for conversion of a public company into a private company is applicable:

- **Board Meeting:** Convene a Board Meeting to take necessary decision to fix the time, place and agenda for convening a General Meeting of members. Also authorize Company Secretary or Director of the company to issue notice of the meeting.
- **Notice of general meeting:** Issue Notice at least 21 clear days of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such meeting.
- **Holding of General Meeting & passing of resolutions:**
  - Hold the General meeting as scheduled and pass the necessary special resolutions.
  - Pass **special resolution** to amend the Name Clause in the MOA by removing the word 'Public'.
  - Pass a **special resolution** inserting in articles the restricting clauses of a private company. Similarly, all other clauses in the articles which do apply to a private company should be added such as limiting the number of shareholders to 200 and those which apply to public companies should be deleted.

  These resolutions will be passed clause by clause.
- **Filing with ROC:** File **Form MGT-14** with ROC for passing special resolution within 30 days.
- **Publication of an Advertisement:** The Company shall, at least 21 days before the date of filing of the application with Regional Director must advertise an application for conversion of public limited company into private limited company in a vernacular newspaper widely circulated in the district, and in English newspaper, which is circulated widely in the State in which the Registered Office of the Company is situated. The application should be advertised in **Form INC-25A**.
- **Application to Regional Director:** The Company must draft an application for the conversion of Public Company into Private Company and file the same with the Regional Director within sixty days from the date of passing of Special Resolution in **Form RD-1** along with the prescribed fee.
- **Registration of documents by ROC:** On receipt of the order of the Regional Director documents will be filed with the Registrar along with a copy of the revised Articles and the Registrar will register the same.
- On registration by the Registrar the process will be complete.

4. An unlisted Public Ltd. Company is having 220 members, 5 directors and is having public deposits of ₹ 5 Crore and shareholders deposits of ₹ 3 Crore (paid-up capital is ₹ 1 Crore and free reserves ₹ 1 Crore and Bank Loan ₹ 2 Crore) is proposing to convert it into a Private Ltd. Company. Mention conditions to be satisfied before conversion of the Company into Private Ltd. Also list out important procedures to be complied for such conversion.
[Dec. 2019 (5 Marks)]

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Ans.: Pre-conditions to be examined for conversion of a public company into a private company are as under:

(*i*) Members to be reduced below 200 (presently 220)

(*ii*) Public deposits to be repaid in full (presently ₹ 5 Crore)

(*iii*) Shareholders deposits/loan should not exceed 100% of paid-up capital and free reserves and share premium (presently ₹ 3 Crore).

In this case, the company has a paid-up capital of ₹ 1 Crore and free reserves of ₹ 1 Crore *i.e.* total of ₹ 2 Crore which is the maximum limit of exempted deposit from shareholder for private limited company. Hence, ₹ 1 Crore needs to be repaid to shareholders before conversion.

According to sections 13 and 14 of the Companies Act, 2013 read with Rule 33 and Rule 41 of the Companies (Incorporation) Rules, 2014, a public company can be converted into the private company only after obtaining its shareholders approval by way of passing a special resolution in general meeting.

Procedure to be complied for conversion: *Please refer to answer of Question No. 3.*

CONVERSION OF SECTION 8 COMPANY INTO OTHER COMPANY

5. POR an association of persons registered as non-profit company under section 8 of the Companies Act, 2013. The association is considering the possibility of converting itself into private company or public company so that it can start commercial activities. Referring to the provisions of the Companies Act, 2013 advice whether it is possible to do so. Can such Section 8 company be converted into One Person Company? Explain in detail various provisions applicable for such conversion.

Ans.: Restriction of alteration of MOA and conversion into other companies [Section 8(4)]: A company registered under section 8 shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. [*These powers have been delegated to Regional Directors*]

A company registered under section 8 may convert itself into company of any other kind only after complying with prescribed conditions as may be prescribed.

Section 8 company cannot be converted to One Person Company (OPC).

Conditions for conversion of a company registered under section 8 company of any other kind [Rule 21 of the Companies (Incorporation) Rules, 2014]:

- A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion. The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion.
- A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in **Form MGT-14** along with the fee.
- The company shall file an application in **Form INC-18** with the Regional Director with the fee along with a certified true copy of the special resolution

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and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned in Rule 22(*2*).

- A copy of the application with annexure as filed with the Regional Director shall also be filed with the Registrar.

6. Daya Foundation is a public company registered under section 8 of the Companies Act, 2013. The directors of the company desirous to start commercial activities and hence they want convert it into normal public company. You are required to state the procedure to be followed in this regard.

Ans.: Procedure for conversion of section 8 company into normal public company: Following procedure for conversion of section 8 company into normal public company is applicable:

- **Board Meeting:** Convene a Board Meeting to take necessary decision to fix the time, place and agenda for convening a General Meeting of members. Also authorize Company Secretary or Director of the company to issue notice of the meeting.
- **Notice of general meeting:** Issue Notice at least 14 clear days of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such meeting.
- **Holding of General Meeting & passing of resolutions:**
  - Hold the General meeting as scheduled and pass the necessary special resolutions.
  - Pass **special resolution** to amend the Name Clause in the MOA by adding the word 'Ltd.'.
  - Pass a **special resolution** as required by section 14 for altering various clause of MOA. Similarly, all other clauses in the articles which are applicable for section 8 company should be deleted and new clauses applicable to normal public company should be added.

  These resolutions will be passed clause by clause.
- **Filing with ROC:** File **Form MGT-14** with ROC for passing special resolution within 30 days.
- **Application to Regional Director:** The company shall file an application in **Form INC.18** with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval.
- **Publication of an Advertisement:** The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice in **Form INC-19** in vernacular newspaper and in English newspaper of the district in which the registered office of the company is situated and on the website of the company, if any.

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- **Registration of documents by ROC:** The Company shall thereafter file with the Registrar a certified copy of the approval of the Regional Director within 30 days from the date of receipt of the order in **Form INC-28** along with a copy of the amended MOA and AOA and the Registrar will register the same.
- On registration by the Registrar the process will be complete.

CONVERSION OF OPC INTO PRIVATE OR PUBLIC COMPANY

7. Explain the provisions & procedure for conversion of One Person Company (OPC) into a Public or Private Company.

Or

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

Can it be done? Examine the legal provisions of the Companies Act, 2013. [June 2022 (5 Marks)]

Ans.: Conversion of One Person Company (OPC) into a Public or Private Company is governed by Sections 18 & 122 of the Companies Act, 2013 read with Rule 6 of Companies (Incorporation) Rules of 2014.

OPC cannot be converted in Section 8 Company.

Voluntarily Conversion: OPC can convert itself voluntarily into private company or public company as per section 18 of the Companies Act, 2013.

Alteration of MOA & AOA: The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with Section 122(3) to give effect to the conversion and to make necessary changes incidental thereto.

Following matters will be considered while giving effect to conversion procedure:

- Alteration of name of company deleting words "One Person Company" and adding the words "Private Company" in MOA & AOA.
- Deleting the clauses of MOA & AOA applicable to OPC and adding the various clauses that are applicable to private company.
- Increasing the number of member to two (in case of private company) and seven (in case of public company).
- Increasing the number of directors to two (in case of private company) and three (in case of public company).

Procedure for conversion of OPC into private or public company:

(1) **Board Meeting:** Convene a Board Meeting to consider the proposal for converting One Person Company into Other Company and to pass necessary resolutions as required by section 122(*4*).

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(2) **Passing of resolutions:** In case of OPC necessary resolutions for amending MOA & AOA will be passed as specified in section 122(4).

[*As per Section 122(4), for the purposes of section 114 (passing of ordinary & special resolution), any business which is required to be transacted at AGM or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of OPC, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 (minutes of meeting) and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under the Act.* Thus, in case of OPC, the resolution required to be passed at general meeting shall be deemed to be passed if the resolution is agreed upon by the sole member and communicated to the company and entered in minute book. The resolution shall be effective from the date of signing such minutes.]

(3) **Filing with ROC:**

- File **Form MGT-14** with ROC for passing special resolution within 30 days.
- File an application in **Form INC-6** within 30 days of passing special resolution for its conversion into OPC along with prescribed fee attaching necessary documents.

(4) **Registration of documents by ROC:** On receipt of the documents if the Registrar get satisfy regarding compliance of prescribed procedure he shall register the documents and issue the fresh Certificate of Incorporation.

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CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY

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

(*i*) Provisions regarding notice of general meeting.

(*ii*) Whether company required to obtain 'No Objection Certificate'?

(*iii*) Types of e-forms required to be filed with ROC for such conversion.

(*iv*) Penalty for contravention of provisions with respect to conversion.

[June 2021 (4 Marks)]

Ans.: Provisions relating to Conversion of Private Company into OPC: Legal Provisions related to Conversion of Private Company into One Person Company are given in Section 18 of the Companies Act, 2013 read with Rule 7 of the Companies (Incorporation) Rules, 2014.

Procedure for conversion of private company into OPC:

(1) **Notice of board meeting:** Issue notice of board meeting to consider proposal of converting the private company into OPC.

(2) **Board Meeting:** In Board Meeting necessary decision will be taken regarding time, place and agenda for convening a General Meeting of members and issue of notice along with explanatory statement.

(3) **NOC from creditors:** No objection certificate will be obtained from members and creditors for converting private company into OPC.

(4) **General meeting and special resolution:** On the appointed date General Meeting will be held and special resolution will be passed considering following matters:

- Change of name by deleting words "Private Company" and adding the words "One Person Company".
- Altering the clauses of MOA and AOA relating to private company and inserting the various clauses that are applicable to OPC.

(5) **Filing of Forms with ROC:**

- File **Form MGT-14** with ROC for passing special resolution within 30 days.
- File an application in **Form INC-6** within 30 days of passing special resolution for its conversion into OPC along with prescribed fee attaching necessary documents.

(6) **Registration & issue of fresh certificate of incorporation:** On receipt of the documents if the Registrar is satisfied regarding compliance of prescribed procedure he shall register the documents and issue the fresh Certificate of Incorporation.

Penalty for contravention of provisions with respect to conversion: *Please refer to answer of Question No. 9.*

9. 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? [Dec. 2020 (4 Marks)]

Ans.: Conversion of private company into One Person Company is governed by Section 18 of the Companies Act, 2013 read with Rule 7 of the Companies (Incorporation) Rules, 2014.

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

Penalty as per Act: Section 18 of the Companies Act, 2013 does not prescribe any penal provision for contravention and hence, the provisions of Section 450 related to punishment where no specific penalty or punishment is provided may be applicable in case of defaults related to conversion of Private Company into One Person Company.

As per Section 450, if a company or any officer of a company or any other person contravenes any of the provisions of the Act or the rules made thereunder, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ₹ 10,000, and in case of continuing contravention, with a further penalty of ₹ 1,000 for each day after the first during which the contravention continue, subject to a maximum of ₹ 2 lakh in case of a company and ₹ 50,000 in case of an officer who is in default or any other person.

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CONVERSION OF COMPANY INTO LLP

10. Is it possible to convert LLP or partnership firm into private or public company? If yes, discuss the provisions relating to this in detail.

Ans.: Often a business is started as a Partnership Firm or LLP. If business grows, partners may decide to convert it into Company.

As per Section 366 of the Companies Act, 2013 any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force can convert itself into Company.

Certificate of Registration [Section 367]: On compliance with the requirements with respect to registration, and on payment of prescribed fees, the Registrar shall certify under his hand that the Firm, LLP, Society applying for registration is incorporated as a company under the Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

Vesting of property on registration [Section 368]: On conversion all property, movable and immovable, belonging to or vested in Firm, LLP, Society at the date of its registration, shall, on such registration, pass to and vest in the company as incorporated under the Act for all the estate and interest of the company therein.

Saving of existing liabilities [Section 369]: The registration of a company shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the Firm, LLP, Society before registration.

Continuation of Pending Legal Proceedings [Section 370]: All suits and other legal proceedings taken by or against the Firm, LLP, Society, which are pending at the time of the registration as a company, may be continued in the same manner as if the registration had not taken place.

Obligations of Firm/LLP/Society Registering as Company [Section 374]: Every Firm/LLP/Society which is seeking registration as a Company shall –

- Ensure that secured creditors of the company, prior to its registration, have either consented to or have given their no objection to convert Firm/LLP/ Society into company.
- Publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration, seeking objections and address them suitably.
- file an affidavit, duly notarized, from all the members or partners to provide that in the event of registration, necessary documents or papers shall be submitted to the registering or other authority with which the Firm/LLP/ Society was earlier registered, for its dissolution as partnership firm, LLP, cooperative society, society or any other business entity, as the case may be.
- Comply with prescribed other conditions.

However, upon registration as a company LLP incorporated under the Limited Liability Partnership Act, 2008 shall be deemed to have been dissolved under that Act without any further act or deed.

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CONVERSION OF COMPANY INTO LLP

11. Briefly discuss the provisions relating to conversion of Private Company into LLP.

Ans.: A Private Company may convert itself into LLP by complying with the provisions of Section 56 read with Schedule III of the LLP Act, 2008. These provisions are discussed below:

Conversion from private company into limited liability partnership [Section 56]: A private company may convert into LLP in accordance with the provisions of Chapter X of the LLP Act and the Third Schedule.

Provisions of Third Schedule:

Eligibility for conversion of private companies into limited liability partnership:

(1) A company may convert into LLP by complying with the requirements as to the conversion set out in the Schedule.

(2) A company may apply to convert into LLP in accordance with the Schedule if and only if –

(*a*) there is no security interest in its assets subsisting or in force at the time of application; and

(*b*) the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.

(*c*) Upon such conversion, the company, its shareholders, the LLP into which the company has converted and the partners of that LLP shall be bound by the provisions of the Schedule that are applicable to them.

Statements to be filed: A company may apply to convert into LLP by filing with the Registrar –

(1) A statement by all its shareholders in such form and manner to be accompanied by such fees as the Central Government may prescribe, containing the following particulars, namely:

(*a*) the name and registration number of the company;

(*b*) the date on which the company was incorporated; and

(2) Incorporation document and statement referred to in Section 11.

Registration of conversion: On receiving the documents for conversion, the Registrar shall, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under the Act.

The LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Companies with which it was registered about the conversion and of the particulars of the LLP in such form and manner as the Central Government may prescribe.

Registrar may refuse to register: If the Registrar is not satisfied with the particulars or other information furnished for conversion of Company into LLP he may refuse to register the same. However, an appeal may be made before the Tribunal in case of refusal of registration by the Registrar.

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Effect of registration: On and from the date of registration specified in the certificate of registration –

(*a*) there shall be a limited liability partnership by the name specified in the certificate of registration registered under the Act;

(*b*) all tangible (movable or immovable) and intangible property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(*c*) the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.

12. Parachute Coconut Oil Manufacturing Ltd. an unlisted public company desires to convert itself into Limited Liability Partnership. You are working as Company Secretary in the company. The Board of Directors of the company has requested you to submit a detailed note showing procedure to be adopted for conversion of company in to LLP. Also state whether it is possible to convert Listed Company into LLP?

Ans.: Only Private Company and Unlisted Public Company can be directly converted into LLP by complying with the provisions of the LLP Act, 2008.

Procedure for conversion of Company into LLP:

(1) **Board meeting:** Convene a Board Meeting to take necessary decisions to fix the time, place and agenda for convening a General Meeting of members. Also authorize Company Secretary or Director of the company to issue notice of the meeting

(2) **NOC from creditors:** Obtain no objection certificate from creditors of the company for conversion into LLP.

(3) **Name Availability:** Confirm availability of proposed name of LLP on MCA site.

(4) **LLP Agreement:** Draft of LLP agreement considering provisions of the Schedule I of the LLP Act, 2008. It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same can be filed in Form No. 3 within 30 days of incorporation/conversion.

(5) **Filing with ROC:** File **Form FiLLiP** with ROC along with following attachments:

- Proof of Address of Registered office of LLP.
- Subscription sheet signed by the promoters. (Notice of Consent & Appointment of Designated Partners with their personal details)
- Detail of partner/designated partner of LLP

(6) **Attachments to application for conversion:** File application for conversion in **Form 18** with following attachments:

- Statement of shareholders.
- Incorporation Documents & Subscribers Statements in Form No. 2.

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- Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor.
- NOC from Income Tax authorities and Copy of acknowledgement of latest income tax return.
- Approval from any other body/authority as may be required.
- Particulars of pending proceedings from any Court/Tribunal etc.

(7) **Certificate of Incorporation:** If all documents filed and information provided is found to be in order and Registrar is satisfied that all procedural compliance is duly complied, he will issue certificate of registration.

(8) **Conclusive evidence**: The Certificate of Registration issued shall be the conclusive evidence of conversion of the LLP.

CONVERSION OF LLP INTO COMPANY

13. Designated Partners of Sara LLP wants to convert LLP into Private Limited Company for further growth of their organization. They have already got the name approved and have secured the DSC and DIN. Now they seek your advice for further processes of conversion of their LLP into Private Limited Company. Advise. [Dec. 2021 (4 Marks)]

Ans.: Relevant provisions for converting LLP into Private Company: As per Rule 3 of the Companies (Authorized to Registered) Rules, 2014, for the purposes of Section 366(2) of the Companies Act, 2013, the provision of Chapter II of the Act relating to incorporation of company and matters incidental thereto shall be applicable *mutatis mutandis* for such registration.

There shall be two or more members for the purposes of registration of a company.

A company with less than seven members shall register as a private company.

Documents & information required to be filed with ROC: A company shall attach and provide the required documents and information to the Registrar along with **Form URC-1** in the following manner:

(1) **Details of partners who are becoming shareholders of the company:** A list showing the names, addresses, and occupations of all persons named therein as partners with details of shares held by them respectively, showing separately shares allotted for consideration in cash and for consideration other than cash along with the source of consideration and distinguishing, in cases where the shares are numbered, each share by its number, who on a day, not being more than 6 clear days before the day of seeking registration, were partners of the LLP or firm as the case may be.

(2) **Details of first directors**: A list showing the particulars of persons proposed as the first directors of the company, along with DIN, passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;

(3) **Details of Firm:** In case of a firm, deed of partnership, bye-laws or other instrument constituting or regulating the firm and in case the deed of partnership was revised at any time in the past, copies of the principal and all

subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered.

(4) **NOC from secured creditors:** Written consent or No Objection Certificate from all the secured creditors of the applicant.

(5) **Consent of members:** Written consent, from the majority of members whether present in person or by proxy at a general meeting, agreeing for such registration.

(6) **Undertaking from proposed directors:** An undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 as applicable.

(7) **Copy of income tax return:** A copy of the latest income tax return of the LLP or firm, as the case may be.

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7 CHAPTER

NON-CORPORATE ENTITIES

PARTNERSHIP

1. Define 'Partnership'. Discuss the essential elements of partnership. (June 2010 (5 Marks))

Ans.: Partnership [Section 4]: Partnership is the relation between persons who have agreed to share the profits of a business carried on by *all* or *any of them* acting for all.

Essential elements of partnership:

(1) Association of two or more persons: Minimum 2 persons are required to form partnership.

Maximum number of partner is 50 whether it banking or any other business.

(2) Carrying on business: Partnership can be formed only for the purpose of carrying on some business. Associations created for charitable, religious and social purposes are not partnerships.

(3) Agreement: The relationship of partnership arises from contract and not from status. Agreement may be express or implied. Further, the agreement must be a valid agreement and for a lawful object and purpose and between the persons competent to contract.

(4) Sharing of profit:

- Sharing the profits of business is the essence of partnership but it cannot be the conclusive evidence as to existence of partnership.
- Sharing of profits implies sharing of losses as well, unless agreed otherwise. Partners may shares profit in one ratio and losses in some other ratio.
- A person may become a partner only in profits and not for losses by agreement between all partners.
- Ratio in which profits and losses will be shared is based on agreement amongst the partners.
- Though sharing of profits of a business is essential, it does not mean that everyone who participates in the profits of a business is necessarily a partner.

Example: A Manager, as a part of his remuneration, may be given a share in profits of the business. He does not thereby become a partner.

(5) Mutual Agency: Partnership business is carried on by all or any of them acting for all. Hence, a partner is both an agent and a principal. Partner by his acts bind other partners and is in turn bound by acts of other partners.

It is to be noted that all partners should not actively participate in business. Business may be managed by one or more partners and remaining partners will be bound by their acts provided such acts relate to carrying on firm's business and have been done in the firm's name.

(6) **Consideration:** As no consideration is required to create agency under section 185 of the Contract Act, 1872, no consideration is required to create partnership which is an extension of law of partnership.

2. Partnership can be formed according to the nature of agreement amongst partners. Explain. [Dec. 2018 (4 Marks)]

Ans.: Meaning of Partnership: Partnership is the relation between persons who have agreed to share the profits of a business carried on by *all* or *any of them* acting for all. Persons who have entered into partnership with one another are **collectively called Firm.**

Creation of Partnership: Partnership is formed on the basis of an agreement between two or more persons to carry on business. It does not arise out of the operation of law as in the case of joint Hindu family business. The terms and conditions of partnership are laid down in a document known as Partnership Deed.

Partnership can be formed only for the purpose of carrying on some business. Associations created for charitable, religious and social purposes are not partnerships.

Thus, a partnership can engage in any occupation – production and/or distribution of goods and services with a view to earning profits.

3. What are the various types of partnership firms?

Ans.: Various types of partnership are as follows:

(1) **Partnership at will [Section 7]:** Where no provision is made by contract between the partners for the duration of their partnership, or when no provision is made as to whom and how the partnership will come to an end, the partnership is known as partnership-at-will.

The partnership-at-will has no fixed or definite date of termination and, therefore, death or retirement of a partner does not affect the existence of such partnership.

Dissolution of partnership at will [Section 43]: Partnership-at-will can be dissolved at any time by any of the partners by giving notice in writing to all other partners. The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

(2) **Particular Partnership [Section 8]:** When two or more persons come together for particular adventures or undertakings it is known as particular partnership. Where the adventure is complete, such partnership can be dissolved. When the persons decide to continue partnership after completion of adventure, it becomes a partnership at will.

Example: A and B enter into a joint trading adventure for sale of sesame seeds grown in both their fields during its harvest season. The partnership comes to an end after the sale.

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(3) **Partnership for fixed term:** It is a partnership entered into for a fixed duration, after the expiry of which it comes to an end. When the partners carry on the business even after the expiry of the said period, it is said to be partnership at will.

(4) **Sub-partnership:** When a partner of a firm agrees to share his own share of profits with an outsider, it is called sub-partnership and such outsider is called a sub-partner. A partner is free to make an agreement of sub-partnership, provided it does not affect the position of other partners with reference to him.

Important points relating to sub-partnership:

- A sub-partner is not connected with the firm.
- A sub-partner has no relationship with other partners.
- A sub-partner has no right to take part in firm's business.
- A sub-partner cannot examine the firm's accounts.
- A sub-partner can claim his agreed share from the partner with whom he enters into sub-partnership.

4. A and B are the civil contractors having their own separate proprietorships. The State Government has issued the tender for construction of 10 km road. As per the terms of the tender, the bid can be submitted either by a partnership firm or a company only. A and B wish to form a partnership firm to become eligible for bidding in the aforesaid tender. Advise them the key ingredients of a Partnership Agreement. [June 2023 (4 Marks)]

Ans.: Partnership deed also known as Partnership Agreement. It is a document that outlines in detail, the rights and responsibilities of all parties to a business operation. It has the force of law and is designed to guide the partners in the conduct of the business. It is helpful in preventing disputes and disagreements over the role of each partner in the business and the benefits which are due to them.

Key ingredients of Partnership Deed/Partnership Agreement:

(1) **Definitions and vital information:** The partnership deed normally carries the name of the business, the address of its principal place of business and a short summary of the nature of business the partners intend to operate.

(2) **Investment:** The deed gives important financial details of the partnership, such as the amount of capital to be invested by each partner, the Profit/Loss sharing of each partner, the salaries to be paid to each partner and the method of distributing the business income. The partnership deed also documents the accepted method of raising additional capital, if necessary how loan funds may be raised and rate of interest if any, applicable on the loans.

(3) **Accounting:** The partnership deed provides for the accepted method of accounting for the cash flow, profit and loss, and assets and liabilities of the business; it also defines the fiscal year to be used in accounting statements and how these statements will be distributed among the partners and other shareholders.

(4) **Duties, powers and obligations of the partners:** The duties, powers and obligations of each partner may also be spelt out in the Partnership Deed.

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The Deed may also provide designate a partner as the Managing Partner, who will be responsible for day to day management and conduct of the business.

(5) **Withdrawals:** The document must also provide for actions to be taken in case of the voluntary withdrawal or death of a partner. In such a case, accounts will have to be drawn up to ascertain the assets, liabilities and the entitlement of each partner including the outgoing partner.

(6) **Expulsion:** If a partner is proving to be a hindrance or detriment to the business, or loses legal rights in a bankruptcy or other court action, the other partners must have a method of modifying the partnership rights of or expelling him.

(7) **Dissolution:** The partnership deed should also describe the methods by which the partnership and business will be dissolved, if desired, and how the accounts among the partners would be settled at the termination of the business.

(8) **Arbitration:** As in all business contracts, a partnership deed must provide for the means of arbitration of disputes. The main goal of the deed is to avoid expensive litigation over details that have not been fully worked out in the signed agreement.

5. There can be different kinds of partners. State briefly about any five kinds of partners. [Dec. 2008 (5 Marks)]

Or

Write a short note on: Sleeping or dormant partner. [June 2009 (5 Marks)]

Ans.: Various types of partners are as follows:

- **Actual/Ostensible Partner:** Active partner is one who is actively engaged in the conduct of the business of partnership. He is the agent of other partners, in the ordinary course of business. Acts of such partner are binding to the firm and he is bound by the act of other partner which is done in ordinary course of business and in the firm's name.
- **Nominal Partner:** He is a partner only by name and only his name is used. He is not entitled to share profits, but will be held liable for the acts of other partners. He shall give notice of his retirement or otherwise terminating his relationship with the firm.
- **Sleeping/Dormant Partner:** He is one who contributes to the capital and has a share in Profits, but does not actively participate in the business. He is liable like any other Partner, but where specifically excluded, he is not so. He is not required to give notice after he ceases to be a partner, nor does his insanity dissolve the firm.
- **Partner in profits only:** When all partners agree that a partner shall share only profits and not losses then such partner is known as partner in profit only. Even though such partner shares profit and not loss, but he is liable for all the debts of the firm are jointly and severally with other partners.
- **Sub-partner:** When a partner of a firm agrees to share his own share of profits with an outsider, it is called sub-partnership and such outsider is called a sub-partner.

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A partner is free to make an agreement of sub-partnership, provided it does not affect the position of other partners with reference to him.

Important points relating to sub-partnership:

- A sub-partner is not connected with the firm.
- A sub-partner has no relationship with other partners.
- A sub-partner has no right to take part in firm's business.
- A sub-partner cannot examine the firm's accounts.

A sub-partner can claim his agreed share from the partner with whom he enters into sub-partnership.

- **Partner by estoppels or holding out:** If the behaviour of a person arouses misunderstanding that he is a partner in a firm, when actually he is not; such a person is stopped from later on denying the liabilities for the acts of the firm. Such a person is called partner by estoppels and is liable to all third parties.

  Holding out means to represent, a stranger, who represent himself to be partner in a firm and induces other to give credit to the partnership are called as partner by holding out.

  Example 1: Arun introduces Balu as a partner in his business to Chandan. Balu, in fact, was not a partner but he did not deny the statement. Chandan advanced a loan to Arun. Arun could not repay the loan. Balu is responsible for the repayment of loan because, Balu is a partner by estoppel.

  Example 2: Where a partner retires, but does not give notice, he holds himself to be a partner. He can be held liable by establishing the fact that he has held himself as partner and on faith of such representation a third party has lent money to the firm.

6. A, B & C are partners in a firm. A introduces D to X as a partner in business. D, in fact, was not a partner in the firm's business. D did not deny this statement. X advanced a loan of ₹ 20 lakh to the firm. On firm's failure to repay the loan X wants to hold D responsible for the repayment of the above loan. Referring to the provisions of the Partnership Act, 1932 decide whether X would succeed in recovering the loan from D.

Ans.: As per Section 28 of the Partnership Act, 1932, if a person represents himself or knowingly permits himself to be represented as a partner of a particular firm, when actually he is not, he is liable as partner of the firm.

Thus, a stranger, who permits himself to be represented as partner in a firm and induces other to give credit to the partnership is called as partner by holding out. Hence, D becomes a partner by estoppels as he did not deny the statement given by A. If firm fails to pay the loan, D is liable to make repayment of loan.

7. Discuss briefly merits and limitations of the partnership form of business organizations.

Ans.: Merits of Partnership: A partnership form of organization offers the following advantages:

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(1) **Ease formation:** It is easy to form a partnership. All that is required is an agreement among the partners. Even the expenses to be incurred for registration are less.

(2) **Pooling of financial resources:** A partnership commands more financial resources compared to sole proprietorship. This helps in expanding business and earning more profits. As and when a firm requires more money, more partners can be admitted.

(3) **Pooling of managerial stalls:** A partnership facilitates pooling of managerial skills of all its partners. This leads to greater efficiency in business operations. For instance, in a big partnership firm, one partner can handle production function, another partner can look after all marketing activity, still another can attend to legal and personnel problems, and so on.

(4) **Balanced business decisions:** In a partnership firm, decisions are taken unanimously after considering all the major aspects of a problem. This ensures not only balanced business decisions but also helps in the smooth implementation of those decisions.

(5) **Sharing of risks:** Unlike sole proprietary organization, the risks of partnership business are shared by partners on a predetermined basis. This encourages partners to undertake risky but profitable business activities.

Limitations of Partnership: A partnership form of organization suffers from the following major limitations:

(1) **Uncertainty of existence:** The existence of a partnership firm is very uncertain. The retirement, death, bankruptcy or lunacy of any partner can put an end to the partnership. Further, the partnership business can come to a close if any partner demands it.

(2) **Risks of implied authority:** It is true that like the sole proprietor each partner has unlimited liability. But his liability may arise not only from his own acts but also from the acts and mistakes of copartners over whom he has no control. This discourages many persons with money and ability, to join a partnership firm as partner.

(3) **Risks of disharmony:** In partnership, since decisions are taken unanimously, it is essential that all partners reconcile their views for the common good of the organization. But there may some situations when partners may adopt rigid attitudes and make it impossible to arrive at a commonly agreed decision. Lack of harmony may paralyze the business and cause conflict and mutual bickering.

(4) **Difficulty in withdrawal from the firm:** Investment in a partnership can be easily made but cannot be easily withdrawn. This is so because the withdrawal of a partner's share requires the consent of all other partners.

(5) **Lack of institutional confidence:** A partnership business does not enjoy much confidence of banks and financial institutions. It is because the nature of its activities is not disclosed to the public and the agreement among partners is not regulated by any law. As a result large financial resources cannot be raised by partnership and growth of business cannot be ensured.

(6) **Difficulties of expansion:** It is difficult for a partnership firm to undertake modernization of expansion of its operations. This is because of its inability to

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raise adequate funds for the purpose. Limited membership and their limited personal resources do not permit large amounts of capital to be raised by the partners. Therefore, large-scale business cannot generally be organized by partnerships.

8. Kamala and Vimala wants to start beauty parlour business in partnership. They both approach you to draft a partnership deed for their beauty parlour business. As a Practicing Company Secretary advice Kamala and Vimala on various clauses to be included in partnership deed keeping in view the various provisions of the Partnership Act, 1932.

Ans.: The written document which contains the mutual rights and obligations of partners is known as partnership deed. The partnership deed is also called as 'Partnership Agreement', 'Constitution of Partnership', 'Articles of Partnership' etc. The deed must be properly drafted and stamped according to the provisions of the Indian Stamp Act, 1899. Each partner should be given a copy of the deed and if the firm is to be registered, a copy of the deed should be filed with the Registrar of Firms. The partnership deed is not a public document and therefore binds only third parties so far as they have notice of it.

Contents of Partnership Deed: The exact terms of the partnership deed (or agreement) will depend upon the circumstances but generally a partnership deed contains the following covenants:

- Firm name.
- Business to be carried by the firm.
- Names and permanent addresses of partners.
- Nature and scope of business.
- Address of business places.
- Commencement and duration of partnership.
- Capital and the contribution made by each partner.
- Provision for further capital and loans by partners to the firm.
- Partner's drawings.
- Interest on capital, loans, drawings and current account.
- Salaries, commission and remuneration to partners.
- Profit (or loss) sharing ratio of partners.
- Keeping of proper books of account, inspection and audit, Bank Accounts and their operation.
- Accounting period and how such accounts are to be prepared.
- Rights, powers and duties of the partners.
- Whether and in what circumstances, notice of retirement or dissolution can be given by a partner.
- Provision that death or retirement of a partner will not bring about dissolution of partnership.
- Valuation of goodwill on retirement, death, dissolution etc.

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- The method of valuation of assets and liabilities on retirement or death of any partner.
- Provision for expulsion of a partner.
- Provision regarding the allocation of business activities to be performed by individual partners.
- The arbitration clause for the settlement of disputes. The terms contained in the partnership deed may be varied with the consent of all the parties, and such consent may be express or implied by a course of dealing.

9. Parmavir & Associates, a firm of practicing professional consists of Ashok, Paramvir and Vir having one third share each in the firm. According to Ashok and Paramvir, the activities of Vir are not in the intrest of the firm and thus want to expel Vir from the firm. Advice Ashok and Paramvir whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932. [June 2019 (4 Marks)]

Ans.: As per Section 33 of the Partnership Act, 1932, a partner can be expelled from the firm if the following conditions are fulfilled:

(*a*) Decision of expulsion of particular partner is taken by *majority* of the partners.

(*b*) The contract/partnership deed provides for such expulsion.

(*c*) Such right of expulsion is exercised in *good faith* and for the firm's benefit.

The test of good faith includes:

- That the expulsion must be in the interest of the partnership.
- That the partner to be expelled is served with a notice.
- That the partner has been given an opportunity of being heard.

Thus, in the given case Parmavir and Ashok the majority partners can expel the partner Vir only if the above conditions are satisfied and procedure as stated above has been followed.

Further the invalid expulsion of a partner does not put an end to the partnership and it will be deemed to continue as before.

10. Raghav and Keshav have started coaching classes of CS Executive in partnership. Advice them about procedure to be followed for registration of partnership under the Partnership Act, 1932.

Ans.: Registration of a firm is not mandatory under the Act. Certain privileges are available only to registered firms, thus indirectly making it compulsory to register so as to enjoy those privileges. Registration does not create partnership but is only the evidence of existence of partnership. It is advantageous both to the firm and also outsiders.

Provision & procedure for registration of partnership [Sections 58 & 59]:

- **Time:** Partnership Firm may be registered at any time during the continuance of partnership.
- **Application form & fee:** Application for registration has to be made in prescribed form along with prescribed fee.

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- **Documents to be attached:** Following documents are required to be attached with application of registration:
  - Affidavit
  - Partnership Deed on requisite stamp paper.
  - Proof of place of business or Rental/Lease Agreement.
  - Other documents are may be required by the Registrar.
- **Signing & verification:** Application for registration has to be signed by all the partners, or their agent specially authorized in this behalf.
- **Registration by Registrar:** If Registrar is satisfied that all requirement relating to registration of firm has been fulfilled, he issues a certificate of registration.
- **Effective date of registration:** Registration is effective form the date, when Registrar makes entries in the 'Register of Firms' and not from the date of presentation of the statement to him.

Registration under Income Tax: It should be noted that registration with the Registrar of Firms is different from registration with the Income Taxation Department. It is mandatory for all firms to apply for registration with the Income Tax Department and have a PAN Card. After obtaining a PAN Card, the partnership firm is required to open a Current Account in the name of the partnership firm and to operate all its operations through this bank account.

11. "Registration of partnership firm is not compulsory, yet it is desirable." Comment. [June 2010 (5 Marks)]

Ans.: Effects of non-registration [Section 69]: Registration of firms is not compulsory, but an unregistered firm suffers from the following disabilities as mentioned:

(1) **Suit between partners and firm:** A partner of an unregistered firm cannot sue the firm or any other partner of the firm to enforce a right arising from a contract, or conferred by the Partnership Act.

(2) **Suit between firm and third party:** An unregistered firm cannot file a suit against a third party to enforce any right arising from a contract. However, third party can file suit against unregistered firm.

(3) **Claim of set-off:** An unregistered firm or a partner thereof cannot claim a set-off or other proceeding to enforce a right arising from a contract **above ₹ 100.**

Non-registration not to affect the following [Section 69]:

(1) Even if firm is unregistered partners can sue for –
  - Dissolution of the firm.
  - Settlement of accounts of a dissolved firm.
  - Realizing the property of a dissolved firm.

(2) Right of the firm to institute a suit or claim of set-off **not exceeding ₹ 100.**

(3) An unregistered firm can bring a suit against third parties to enforce a right arising otherwise than out of a contract *e.g.* for enforcing a trademark.

12. A, B & C, who are partners of an unregistered firm, sell washing machine to D for ₹ 10,000 on credit basis. After some time, the firm purchases form D a photocopying machine for ₹ 40,000 on credit basis. On failure to pay the price, D files a suit against the firm, but the firm insists that the amount of ₹ 10,000 should be adjusted against the claim in question. Will the firm succeed? Give reasons.

Ans.: As per Section 69 of the Partnership Act, 1932, registration of firms is not compulsory, but an unregistered firm suffers from certain disabilities. An unregistered firm cannot file a suit against a third party to enforce any right arising from a contract. However, third party can file suit against unregistered firm.

Further an unregistered firm cannot claim a set-off or other proceeding to enforce a right arising from a contract **above ₹ 100**. Hence, firm will not succeed in claiming set-off as amount is exceeding ₹ 100.

13. A, B and C are partners of an unregistered firm. D owes this firm ₹ 10,000 on a contract. The firm files a suit against D. The suit is dismissed for non-registration of firm. The firm is registered later on. Can the firm now successfully bring the suit against D?

Ans.: As per Section 69 of the Partnership Act, 1932, registration of firms is not compulsory, but an unregistered firm suffers from certain disabilities. This Section requires that the firm must be registered at the time of instituting the suit. Since, in the given case, a fresh suit is filed and at this time the firm is a registered firm, the firm will be entitled to institute a valid suit.

14. Aman, Bhuvan and Chaman are partners in a partnership firm. Their firm is unregistered. After sometime, Aman and Bhuvan decide to get their firm registered. They request Chaman also to put his signature on the registration papers. Chaman refuses to do so. Now Aman and Bhuvan file a suit against Chaman for compelling him to join in the registration of firm. Will they succeed? Give reasons.

Ans.: As per Section 69 of the Partnership Act, 1932, registration of firms is not compulsory, but an unregistered firm suffers from certain disabilities. An unregistered firm cannot file a suit against a third party to enforce any right arising from contract. However, third party can file suit against unregistered firm. Hence, Aman and Bhuvan will not succeed in their suit against Chaman for compelling him to join in the registration of firm. The only remedy of such partners is to institute a suit for dissolution. [*Keshav Lal* v. *Chuni Lal*]

HINDU UNDIVIDED FAMILY

15. What do you understand by 'Hindu Undivided Family'? Also state the characteristics of HUF.

Ans.: Meaning of HUF Business: Joint Hindu Family Business is a different type of organization, which is found only in India. As the name suggests, it is type of organization in which all the members of Hindu Undivided Family manage and control the business with the direction of head of the family.

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Joint Hindu Family Firm is created by the operation of law. It does not have any separate and distinct legal entity from that of its members.

The business of the Joint Hindu Family is controlled and managed by one person who is called 'Karta' or 'Manager'. The Karta or manager works in consultation with other members of the family but ultimately he has a final say. The liability of Karta is unlimited while the liability of other members is limited to their shares in the business.

Characteristics of Joint Hindu Family Business:

- **Governed by Hindu Law:** The business of the Joint Hindu Family is controlled and managed under the Hindu law. There are two schools of Hindu law: (*i*) *Dayabhaga* and (*ii*) *Mitakshara*.
- **Management:** All the affairs of a Joint Hindu Family are controlled and managed by one person who is known as 'Karta' or 'Manager'. The Karta is the senior most male member of the family. He works in consultation with other members of the family but ultimately he has a final say. The members of the family have full faith and confidence in Karta. Only Karta is entitled to deal with outsiders But other members can deal with outsiders only with the permission of Karta.
- **Membership by Birth:** The membership of the family can be acquired only by birth. As soon as a male child is born in family, he becomes a member. Membership requires no consent or agreement.
- **Liability:** Except the Karta, the liability of all other members is limited to their shares in the business. The Karta is not only liable to the extent of his share in the business but his separate property is equally attachable and amount of debt can be recovered from his separate property.
- **Permanent Existence:** The death, lunacy or insolvency of any member of the family does not affect the existence of the business of Joint Hindu Family. The family goes on doing its business.
- **Implied Authority of Karta:** In a joint family firm, only Karta has the implied authority to contract debts and pledge the credit and property of the firm for the ordinary purpose of the businesses of the firm.
- **Minor can also take part in business:** In a partnership, minor cannot become co-partner though he may be admitted to the benefit of partnership. In a Joint Hindu Family firm minor can take part in business activities under the supervision of Karta.
- **Dissolution:** The Joint Hindu Family Business can be dissolved only at the will of all the members of the family. Any single member has no right to get the business dissolved.

16. What are the key points in creation of HUF and HUF deed?

Ans.: Creation of HUF:

- One person cannot form HUF. An HUF is formed by a family.
- An HUF is automatically created at the time of marriage.
- HUF consists of a common ancestor and all of his lineal descendants, including their wives and unmarried daughters.

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- Hindus, Buddhists, Jains and Sikhs can form HUFs.
- HUF usually has assets which come as a gift, a will, or ancestral property, or property acquired from the sale of joint family property or property contributed to the common pool by members of HUF.
- Under the Income-tax Act, 1961, an HUF is a separate entity for the purpose of income tax return.

Creation of HUF Deed: One has to prepare a deed on stamp paper declaring the formation of the HUF. It should have all the details, including the name of Karta, Co-parceners, address and source of funds in the corpus. Creating a HUF Deed is not mandatory. However, it is always beneficial to have a HUF Deed.

Key issues to be noted in preparation of a HUF Deed are:

(*a*) **Stamp Paper:** A HUF deed is a written formal document on a stamp paper specifying the name of Karta and Coparceners of HUF.

(*b*) **Karta:** The eldest male member of HUF becomes Karta of HUF.

(*c*) **Name of members:** The name of members of HUF and the name of the HUF is also required to be stated in the HUF Deed at the time of creating of HUF.

(*d*) **Name of HUF:** The name of HUF is usually the name of the Karta followed by the word HUF *e.g.* Ram Kumar HUF.

(*e*) **Capital:** HUF Deed also states the capital with which the HUF has been initiated. There are various sources through which capital can be introduced.

(*f*) **Declaration member of family:** A declaration is also provided by each member of family where they declare the name of Karta and also state that –

- Karta has the authority of the accounts vested in his hand.
- Karta holds the right to govern all the transactions of the HUF accounts on behalf of the members.

(*g*) **Rubber stamp of HUF:** A rubber stamp of HUF will also be prepared. Rubber stamp should be Rectangular. Rubber Stamp will be affixed on all the documents pertaining of HUF to authorize the transaction.

(*h*) **Notarization:** It is recommended that the Deed should be notarized.

(*i*) **Steps to be taken after registration of HUF Deed:**

- Register the Deed.
- Obtain PAN.
- Once the declaration deed is made, the Karta should apply for a permanent account number (PAN) for the HUF. This is mandatory because all financial transactions must carry PAN.
- Open bank account.

17. Smt. H is head of the family consisting of her husband (who is physically challenged person) and two sons. She heard that there about numerous benefits in terms of management, decision making and taxation, if she forms a Hindu Undivided Family (HUF), form of organization which is peculiar to India. As a professional, advice key points to Smt. H in creation of HUF covering taxation aspects. [Dec. 2020 (5 Marks)]

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Or

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. [June 2021 (5 Marks)]

Ans.: Key points in creation of HUF

- Under the Income-tax Act, 1961, an HUF is a separate entity for the purpose of income tax return.
- The same tax slabs are applicable to HUF as to individual assessee.
- If 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 your HUF.
- The income from property of HUF can be further invested in instruments such as shares, mutual funds, etc and will be assessed under HUF.
- Existence of property or multiple members is not a pre-requisite to create HUF.
- A family which does not own any property may still have the character of Hindu joint family. This is because a Hindu is born as a member of the joint family.
- Gifts received by HUF from its members are exempted under Section 56(2) (*vii*) of the from Income-tax Act, 1961.
- The HUF is taxable as separate person under income tax hence one can save tax from basic exemption of ₹ 2.5 lakh.
- Apart from basic exemption under section 80C deduction up to ₹ 1.5 lakh is also available.
- HUF can also avail exemptions for Shot term Capital Gain & Long-term Capital Gain tax under various provisions of the Income-tax Act, 1961.

SOLE PROPRIETORSHIP

18. What are the advantages and limitations of the 'Sole Proprietorship' business form of organization?

Ans.: Merits of Sole Proprietorship: A sole proprietary organization has the following advantages:

(1) **Easy formation:** A sole proprietorship business is easy to form where no legal formality involved in setting-up business. It is not governed by any specific law. It is simply required that the business activity should be lawful and should comply with the rules and regulations laid down by the local authorities.

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(2) **Better Control:** In sole proprietary organization, all the decisions relating to business operations are taken by one person, which makes functioning of business simple and easy. The sole proprietor can also bring about changes in the size and nature of activity. This gives better control to business.

(3) **Sole beneficiary of profits:** The sole proprietor is the only person to whom the profits belong. There is a direct relation between effort and reward. This motivates him to work hard and bear the risks of business.

(4) **Benefits of small-scale operations:** The sole proprietorship is generally organized for small-scale business. This helps the proprietor's family members to be employed in business. At the same time such a business is also entitled to certain concessions from the government. For example, small industrial organizations can get electricity and water supply at concessional rates on a priority basis.

(5) **Inexpensive Management:** The sole proprietor does not appoint any specialists for various functions. He personally supervises various activities and can avoid wastage in the business.

(6) **Confidentiality:** A sole proprietor can keep all business related information to himself as the decision-maker. The law does not bind them to make the accounts of a sole proprietorship public.

(7) **Lesser paperwork:** Business setup involves several tasks. Among these, one of the most dreaded ones is paperwork or documentation. Most of the 'would-be' business owners do not wish to spend their time in the lengthy process of registering the business as a corporation. So, for such individuals, a sole proprietorship is the best option. The paperwork in a sole proprietorship is much less.

(8) **Simple tax calculations:** One of the benefits of being a sole proprietor is that the taxes are simpler. The tax requirements are pretty straightforward compared to the other business structures. Sole proprietorships are not considered separate legal entities. So, business income or losses are reported on the owner's income tax return. The sole proprietors need not file taxes separately for personal and business transactions. Besides these, sole proprietors also get certain tax advantages accompanying small business deductions.

(9) **Lower business fees:** Starting a new venture with a tight budget is not uncommon. Several individuals plan their ventures with less capital. For such entrepreneurs, the sole proprietorship is the best business structure. Sole proprietorships can help the owners save on registration. Also, the legal requirements and involved costs in a sole proprietorship is much less.

Limitations of Sole Proprietorship: A sole proprietor generally suffers from 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 the security. This reduces the scope of business growth.

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(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 proprietary organization 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.

(5) **Selling the business is a challenge:** Selling a sole proprietorship business is challenging. If the business is significantly profitable, selling it would trigger high capital gains tax. Also, selling off a sole proprietorship business means selling the debts as well. New start-ups might have more debts than profits. This often makes it difficult to predict profits for potential buyers.

(6) **Risk in decision making:** In a sole proprietorship business, there is nobody to assist in decision-making. So, the risk of errors in decisions is high in sole proprietorships.

(7) **No economies of scale:** Large-scale business organizations enjoy large-scale economies as well. That means they can produce more in lesser overhead costs per product.

From the above account of the merits and limitations, it becomes clear that it is only personal services like repair work, tailoring, small factories, retail shops and professional activities which can be set-up as sole proprietary organizations. In India, this form of organization is quite popular and accounts for the largest number of business units.

19. What formalities and procedure is required to be followed to start a business by a sole proprietor?

Ans.: Sole Proprietorship is formed, managed and controlled by one individual.

No deed or agreement is required to constitute a Sole Proprietorship.

However, in actual practice and keeping in mind the nature of business activity, registration may be required under the following enactments as prevailing in the respective States or of the Central Government, such as –

- Shops and Commercial Establishments Act (State specific)
- Law relating to Professional Tax (State specific)
- Registration under the Micro, Small & Medium Enterprises Development Act, 2006.
- Registration as a Small Scale Industry (State specific)
- GST registration
- Intellectual Property laws.

20. Distinguish between: Sole Proprietor & One Person Company (OPC)

Ans.: Following are the main points of difference between Sole Proprietor & One Person Company (OPC):

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Points	Sole Proprietor	One Person Company (OPC)
Meaning	The word 'sole' denotes single and 'proprietorship' signifies ownership. Sole proprietorship is recognized as one of the most common, simplest and oldest form of business entity. It is owned and controlled by one person only and the person running it is known by the name of 'sole proprietor' or a 'sole trader'.	One Person Company is a fusion of Sole-Proprietorship and Company form of business. The Companies Act, 2013 brought in the new concept of One Person Company, thereby enabling a person who is carrying on the business in the Sole-Proprietorship firm to enter into a corporate outline with relaxed requirements under the Act.
Registration	In case of sole proprietorship formal registration is not required.	One Person Company requires registration under the Companies Act, 2013.
Distinct legal entity	A Sole Proprietorship is not a distinct legal entity from the proprietor.	One Person Company is a distinct legal entity from the business owner.
Liability	A proprietor of a sole proprietorship has unlimited liability for the debts incurred by him. This means that if the business is in debt, even the personal assets of the proprietor may be used to recover the debt.	As a One Person Company is a separate legal entity, hence the owner has a limited liability. This is the most desirable reason why many individuals are opting for an OPC.
Taxation	In proprietorship, tax liability of proprietorship firm is borne by the proprietor. He can claim basic exemption under the Income Tax Law.	For OPC, tax liability of the company and single member is independent. OPC is liable to be taxed at 30% as it formed as private company. No basic exemption is available for OPC.
Succession	In the case of sole proprietorship, succession takes place through an execution of a Will.	In a One Person Company, nominee designated by its member, who shall, in the event of the death of the member, become a member of the company and shall be responsible for the running of the company.
Separate Property	As there is no distinction between the owner and business in sole proprietorship therefore any creditor of the proprietorship can also claim on all the assets of the owner.	In OPC there is an added advantage as a company is a separate legal entity. Any property purchased by OPC will be the asset of that OPC. The member does not have an insurable interest in the property of the company.

21. Ankur has passed out MBA from a premier institution. He wants to become an entrepreneur but he is confused in choosing the form of ownership. Advice Ankur on the aspects which he should consider before deciding the form of ownership. (Dec. 2018 (4 Marks))

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Ans.: One of the first decisions that are faced by entrepreneurs is how the business should be structured. All businesses must adopt some legal configuration that defines the rights and liabilities of participants in the business's ownership, control, personal liability, life span, and financial structure. This decision will have long-term implications, so one has to select the form of ownership that is right for him/her.

Thus, while choosing the form of ownership one must consider following aspect:

- His vision regarding the size and nature of the business.
- Level of control he wishes to have.
- Level of "structure" he is willing to deal with.
- Business vulnerability to litigation.
- Tax implications of the different organizational structures.
- Expected profit (*or loss*) of the business.
- Whether or not he will need to re-invest earnings into the business.
- His need for access to cash out of the business for himself.

22. 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 organization. [Dec. 2020 (4 Marks)]

Ans.: 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 cause 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 organization 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.

From the above discussion, it is clear that sole proprietorship is suitable only for personal services like repair work, tailoring etc., small factories, retail shops and professional activities. In India, sole proprietorship form of organization is quite popular and accounts for the largest number of business units.

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MULTI STATE CO-OPERATIVE SOCIETY

23. What do you understand by 'Multi State Co-operative Society'? What types of co-operative societies can be registered under the Multi-State Co-operative Societies Act, 2002?

Ans.: Meaning: Multi State Co-operative Society means a society whose main object is to serve the interests of its members in more than one state.

Thus, such societies have members from more than one State and also have business transactions in more than one State.

Governing Law: The Multi State Co-operative Societies Act, 2002 facilitates the incorporation of co-operative societies.

Object & functions: The main object and functions of Multi State Co-operative Society is to spread over to several states.

Types of Multi Co-operative Society: The Act provides for formation of both the types of Co-operative Societies *i.e.*

(*a*) Primary co-operatives [with both individual and institutional members] and

(*b*) Federal co-operatives [with only institutional membership].

Various types of Multi State Co-operative Society are as follows:

- Multi State Solar Co-operative Society
- Farming Co-operative Society
- Credit Co-operative Society
- Agricultural Co-operative Society
- Real Estate Co-operative Society
- Diary Firm Co-operative Society
- Transport Co-operative Society *etc.*

24. Write a short note on: Benefits of Multi State Co-operative Society

Ans.: Various benefits of Multi State Co-operative Society are given below:

- **Loans at Reasonable Rates:** Multi State Co-operative Society provides loans at reasonable rates of interest to the poor. This benefits them, as they do not have to go to financiers who lend at high interest rates.
- **Democracy:** Multi State Co-operative Societies are democratically governed (one-member, one-vote)
- **Low Compliance:** Regulatory requirements of filing is minimum for Multi-State Co-operative Society. Thus, it has low compliance costs.
- **Sense of belonging & ownership among members:** A Multi State Co-operative Credit Society belongs to its members, who are at the same time the owners and the customers of their society; this creates a sense of belonging and ownership among the members.

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25. Prathik has studied about mass farming and is keen in uniting farmers in various states by forming a Multi State Co-operative Society. Brief Prathik on the documentary requirements for formation of Multi State Co-operative Society and the Authority with whom the application needs to be filed. [Dec. 2019 (5 Marks)]

Or

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. [June 2022 (4 Marks)]

Ans.: As per Rule 3(*1*) of the Multi State Cooperative Societies Rules, 2002, an application in **Form-1** should be filed with the Central Registrar of Cooperative Societies, New Delhi along with the following enclosures:

- A certificate from the bank stating credit balance there in favour of the proposed multi-state co-operative society.
- A scheme explaining how the proposed multi-state co-operative society has reasonable prospects of becoming a viable unit.
- Four copies of bye-laws in original.
- Proposed area of operation for registration shall initially be permitted for two contagious States only.
- List of at least 50 members from each State along with the copies of ID proofs of the members duly attested by Chief Promoter.
- 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 of registration documents.
- 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:

- No Objection Certificate from the Registrar of Cooperative Societies of the States/UT where the area of operation of the society is proposed to be confined.
- 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.

TRUST

26. What do you understand by 'Trust' under the Indian Trust Act, 1882?

Ans.: Trust [Section 3]: Trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

Author	The person who creates trust.
Trustee	The person in whose favour confidence is declared.
Beneficiary	The person for whose benefit the confidence is accepted.
Trust property	The subject matter of the trust. It also called as **beneficial interest.**
Instrument of Trust	The instrument declaring the trust.

Example: Ram transfers certain property in favour of Shyam for the benefit of his wife and children. This is trust. In this case Ram is author of trust; Shyam is Trustee; Wife and children of Ram are beneficiary.

27. State the purposes for which trust may be created.

Ans.: Creation of Trust - Lawful purpose [Section 4]: Trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is

- Which is **forbidden by law**
- Which is of such a nature that if permitted it would **defeat the provisions of any law**
- Which is **tainted with fraud**
- Which **involves or implies injury to any person**
- Which is **injurious to the property** of any person
- Which is **immoral** in the opinion of the Court or
- Which the Court regards as **opposed to public policy.**

Every trust of which the purpose is unlawful is void and where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

28. Distinguish between: Revocable & Irrevocable Trusts

Ans.: Revocable Trusts: A revocable trust is one which is revocable when it is created by a non-testamentary instrument or orally and a power of revocation has been expressly reserved by the settler.

Revocation of trust [Section 78]: A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only:

(*a*) Where all the beneficiaries are competent to contract — by their consent.

(*b*) Where the trust has been declared by a non-testamentary instrument or by word of mouth — in exercise of a power of revocation expressly reserved to the author of the trust.

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(c) Where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors — at the pleasure of the author of the trust.

Example: A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Irrevocable Trust: All other trusts are irrevocable. Besides if a trust is created for charitable or religious purposes, such a trust cannot be revoked.

29. Distinguish Between: Trust & Agency [Dec. 2010 (4 Marks)]

Ans.: Following are the main points of difference between trust & agency:

Points	Trust	Agency
Meaning	Trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.	Agency is a contract in which one person authorize another person to act on behalf of former.
Ownership	A trustee is the full owner of the trust property.	An agent has no title to the property.
Control	A trustee acts on his own right.	An agent acts on behalf of his principal and is subject to his control.
Personal Liability	A trustee may be personally liable.	An agent is generally not personally liable.
Governing law	Indian Trust Act, 1882	Indian Contract Act,1872

30. What are the key tax exemptions available to Trust under the Income-tax Act, 1961?

Ans.: Exemptions available to Trusts are primarily governed by the provisions of the Income-tax Act, 1961. The exemption has to be read keeping in mind whether the Trust is a Public Charitable Trust, Private Trust, Religious Trust, etc.

Certain key exemptions under the Income-tax Act, 1961 are listed below:

(1) **Tax exemption under Section 10:** Total tax exemption is available for certain types of trusts which include those which are formed for any of the activities related to sports, education, scientific research, professions, or promotion of Khadi & Village-based industries, hospitals etc. and are notified as charitable or religious institutions.

(2) **Tax exemption under Section 11:** Any income, profits or gains obtained by a trust from a property held by the trust established wholly for the purposes of religious or charitable nature shall not be included in the total income of the trust.

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Since such income shall not constitute to be a part of the trust's income, therefore, it is not taxable. However, as per section 13, there are certain situations where the tax exemptions under section 11 are not applicable. Such instances include where –

(*a*) Income earned from the property held under the trust of private religious nature and does not endure benefit for the public.

(*b*) The entire income of a charitable trust which is established for a particular religion, community or caste, income of those charitable trust whose funds do not get invested in the modes specified under section 11(5).

(3) **Tax exemption under Section 12:** The incomes that are excluded from the computation of taxable income of trust or society are as follows:

- Income which is derived from the property that is held under the authority of trust with the purposes which are wholly charitable or religious in nature.
- Income which is kept aside to the extent that does not exceed 25% of the total income received in lieu of the property.
- In cases of charitable trusts, specifically those formed before 1st of April, 1961, income which is acquired from the property which is held partially for religious or charitable purposes within India.
- In furtherance of the above case, the income which is set apart to a certain extent and which does not exceed 25% of the total income.
- In cases of income that is obtained from a trust created before 1st April, 1952 for charitable purposes and spent outside India.
- Income made by way of voluntary contributions towards the corpus of the trust.
- Charitable trusts created for the benefit of any of the socially and economically backward castes such as Scheduled Castes, Scheduled Tribes or women or children.

Trusts are allowed to set apart or accumulate some of the funds received from voluntary contributions for certain specific purposes. The resultant benefit obtained by the trust is that amount so deducted is not considered as forming part of income of the previous year and therefore not taxed.

31. What are the tax exemptions available to Private Trust?
[Dec. 2020 (4 Marks)]

Ans.: (1) Type of Private Trust: The taxability of the Trust depends upon the type of the trust.

(*a*) **Non-discretionary 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.

(*b*) **Discretionary trust:** 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.

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(2) Taxability of profits and gains from business of trust: Section 161(1A) of the Income-tax Act, 1961, provides that if any part of the income of a trust includes profits and gains from business, then the aforesaid principle 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.

(3) Tax planning for trust: 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.

(4) Compliance of provisions of the Income-tax Act, 1961: Further Private Trusts may comply with the provisions of Sections 11 and 12 and 164 of the Income-tax Act, 1961.

32. Briefly discuss the procedure for creation of trust.

Ans.: Important points and procedure for creation trust is given below:

(1) Who can create trust: A Trust can be created by any person over 18 years of age and mentally sound and capable of understanding.

(2) Aspect to considered before registration of trust: Before registration of trust, following aspects have to be decided:

- Name of the trust
- Address of the trust
- Objects of the trust [*Charitable* or *Religious*]
- One settler of the trust
- Two trustees of the trust
- Property of the trust – movable or immovable property.

(3) Creation of a Trust Deed: A trust may be created by any language sufficient to show the intention and no technical words are necessary. A trust may even be created by the use of words which are primarily words of condition, but such words will constitute a trust only where the requisites of a trust are present. Though the use of the word 'trust' is not needed to create a valid trust, the terms of the grant or will make it clear that an obligation is actually annexed to the ownership of the trust property.

(4) Signatures: Obtain the signatures of Settlor, Trustees and Witnesses 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.

(5) Stamp duty: Print the Trust Deed on stamp paper of appropriate value.

(6) Registration: Register the trust deed in a Sub-Registrar office paying registration charges. A photocopy of the Deed is also required to be submitted. The photocopy of the Deed should also contain the signature of Settlor on all the pages.

(7) Presence of settlor and witnesses: At the time of registration, the settlor and witnesses must be personally present with their identity proof in original.

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(8) The Sub-Registrar retains the photocopy and returns the original copy of the Trust Deed.

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

33. 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? [June 2021 (4 Marks)]

Ans.: (I) Various aspects to be decided before registration of the trust: 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:

- Name of the trust
- Address of the trust
- Objects of the trust (Charitable or Religious)
- One settler of the trust
- Two trustees of the trust
- 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) Bank Account: 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:

- Account opening form
- Copy of PAN Card in the name of the Trust
- Proof of address of the Trust
- Certified copy of resolution regarding opening and operation of the account Details of trustees, settlor, beneficiaries and signatories with their identity and address proof (KYC documents)
- Power of attorney, if any, granted to any employee to transact business of the Trust

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- Registered and communication address of the Trust with telephone/fax/e-mail address.
- Photographs of authorized signatories

34. 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. [Dec. 2021 (4 Marks)]

Or

Explain the difference between Public Trust and Private Trust. [Dec. 2022 (4 Marks)]

Ans.: In private trusts, beneficiaries are definite and ascertained or individuals who within a period of time can be definitely ascertained.

A trust for the benefit of employees of a company 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.

Following are the main points of difference between public trust & private trust:

Points	Private Trust	Public Trust
Beneficiaries	In private trusts, beneficiaries are definite and ascertained or individuals who within a period of time can be definitely ascertained.	In public trust, the beneficial interest must be vested in an un-ascertained or fluctuating body of persons – either public at large or some considerable portion of it answering a particular description.
Concern	Private trusts concern only individuals or families for private conveniences and support.	A public trust is constituted for the benefit of public at large or sections thereof.
Rule against perpetuities	Private trusts are subjected to the rule against perpetuities.	Public trusts are an exception to rule against perpetuities.
Ending trust	In the case of a private trust, beneficiaries may put an end the trust or to agree to divert trust funds to a purpose, different from the original object.	In the case of a public trust such a course is not permissible.
Joint trustees	In the case of private trust, the office of trustee is a joint one. The trustee must act together as a body. Where the administration of the trust is vested in a number of trustees, they all form one collective trustee and therefore must execute the duties of their office in office in their joint capacity.	In the case of a public trust, where there are a number of trustees, in the absence of a provision to the contrary in the instrument of foundation, a majority of trustees can bind the minority.

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Points	Private Trust	Public Trust
Example	Most common example of private trust is where a person creates a trust by deed or by will, providing for the enjoyment of his property by members of his family and descendants.	On the other hand, the essence of public trust lies in its being, for the benefit of the public as a whole or a section of the public and in its permanence.
Enforcement of the trust	In the case of a private trust, it is the beneficiary alone who can apply to enforce the trust.	The Advocate General or the Collector or two member of the public with their leave are the only persons who can apply to the court to enforce the trust.

SOCIETIES REGISTRATION ACT, 1860

35. Explain the provision and procedures relating to registration of Societies under the Societies Registration Act, 1860. [June 2002 (3 Marks)]

Ans.: Societies formed by memorandum of association and registration [Section 1]: Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any other purpose described in Section 20, may, by subscribing their names to a memorandum of association, and filing the same with ROC form themselves into a society.

Memorandum of Association [Section 2]: The memorandum of association shall contain the following:

- Name of the society
- Object of the society
- Names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by **not less than 3 members** of the governing body, shall be filed with the MOA.

Registration & Fees [Section 3]: On filing of MOA & certified copy of the rules and regulations of the society, the Registrar shall certify under his hand that the society is registered. There shall be paid to the Registrar for every such registration a fee of ₹ 50 or such smaller fees as the State Government may from time to time, direct.

Selection of a Name: When selecting a name for society registration, it is vital to understand that an identical or similar name of a currently registered society will not be allowed. Moreover, the proposed name shall not suggest any patronage of State Government or Government of India or contravene the provisions of the **Emblems & Names (Prevention of Improper Use) Act, 1950.**

Procedure for Registration:

Following documents are required to be filed with the Registrar of Societies for registration of a society under the main Act or corresponding Acts of various State Governments:

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(1) Covering letter requesting for registration addressed to the registering authority and signed by all the subscribers to the MOA or by a person authorized by all of them. Following documents are required to be attached to the application for registration:
   - A certified copy of the MOA, signed by the founding members.
   - A certified copy of the rules and regulations, signed by the founding members, along with a duplicate copy.
   - A table with the names and address and occupation of all members of the society with their signatures.
   - Address proof of registered office and no-objection certificate from the landlord.
   - PAN Card of all the members of the proposed society.
   - Other documents as may be required by the registering authority.

(2) MOA in copies which shall contain following details:
   - Name of the society
   - Objects of the society
   - Names, addresses and occupation of the members of the governing body
   - Place of registered office of the Society, and
   - Names, addresses and full signatures of the seven or more persons subscribing their names to the memorandum of Association. Their signatures should be witnessed.

(3) Rules & Regulations/Bye-laws in duplicate duly signed by founding members or at least three members of the governing body.

(4) Affidavit on non-judicial stamp paper of requisite value by the President or secretary of the society duly attested by Oath Commissioner or Notary Public or Magistrate of first class.

(5) Documentary proof such as rent receipt or property tax receipt in respect of the Registered Office of the Society or no-objection of the owner of the premises.

(6) Registration fee in cash or by demand draft.

36. Moorthy wants to from a society to promote the 'Beti Bachao, Beti Padao Movement' of Government of India. He seeks your advice on the following:

(*i*) The purpose for which a society can be formed under the Societies Registration Act, 1860.

(*ii*) Whether the foreigners and other registered societies can be member of a society? [June 2019 (4 Marks)]

Ans.: (*i*) As per Section 20 of the Societies Registration Act, 1860, following societies can be registered under the Act:

- Charitable Societies.
- Military Orphan Funds.

- Societies established at the several Presidencies of India.
- Societies established for the promotion of science, literature or the fine arts.
- Foundation or maintenance of libraries or reading rooms for use of its members or public.
- Galleries of Painting & other works of art.
- Collection of natural history, mechanical and philosophical inventions, instruments designs.

Besides these purposes, the respective State Governments may provide for any other objects by for which societies can be registered in their legislations.

(*ii*) A Society can be created by a minimum of 7 or more persons. Apart from persons from India, companies, foreigners, as well as other registered societies can also be members of the society.

37. An application for registration of Society named Kautilya Institute of Legal Education & Training is submitted under the Societies Registration Act, 1860. A copy of memorandum of association and bye-laws is enclosed along with the prescribed fee. The registrar refused to register the society on the ground that memorandum of association is not signed by seven members. Is the refusal justified.

Ans.: As per Section 1 of the Societies Registration Act, 1860, any seven or more persons associated for any literary, scientific, or charitable purpose, or for any other purpose described in Section 20, may, by subscribing their names to a MOA, and filing the same with ROC form themselves into a society.

In the given case, below 7 members have subscribed their signatures to the memorandum and hence, the Registrar will refuse registration.

38. State the benefit of forming a Society under the Societies Registration Act, 1860.

Ans.: Various benefits of forming a Society under the Societies Registration Act, 1860 are as follows:

(1) **Tax exemptions:** Subject to fulfilment of certain conditions, a society can avail exemption from income tax, if it obtains registration under section 12A or section 12AA of the Income-tax Act, 1961.

(2) **No renewal of registration:** Once the registration is granted to the trust, it will be hold good till the cancellation of registration. There is no provision which requires any renewal of registration. Thus, the benefits of registration can be claimed for lifetime by NGO.

(3) **Rebate to donor:** Donors to societies may claim a rebate under the Income-tax Act, 1961 for donations made to the Society, provided the society has applied and obtained approval under Section 80G. Registration under section 12A is one-time registration.

(4) **Grants:** Societies, being NGO's receive various grants from government and other agencies. They are eligible to get grants and financial funding from various agencies. These agencies generally make grants to societies registered under Section 12A.

(5) **Participation of members:** Societies are run on democratic principles and ensure wider participation by members in the activities.

(6) **Better governance:** In view of the election process, there is scope for removing inefficient management and effect changes in the management to ensure better governance.

39. State the benefit of forming a Society under the Societies Registration Act, 1860.

Ans.: Consequences of Registration/Non-Registration of a Society

The Societies Registration Act, 1860 lays down procedure for registration of societies for various purposes. The registration gives the society a legal status and is essential for:

- Obtaining registration and approvals under Income-tax Act, 1961.
- Lawful vesting of property in the societies.
- Providing authenticity and recognition to the society before all authorities and the world at large.
- Opening bank accounts and transaction of business.

Once registered under the Societies Registration Act, 1860, the society must restrict its activities to the objects contained in its Memorandum.

A registered society enjoys the status of a legal entity apart from the members constituting it. A society so registered is a legal entity/person similar to an individual but with no physical existence. As such it can acquire and hold property and can sue and be sued in its own name.

The society should be registered under the Act to acquire the status of juridical person.

In the absence of registration, all the trustees in charge of the fund have alone a legal status and the society has no legal status, and, therefore, it cannot sue and be sued.

If a society is not registered, it may exist in fact and theory, but not in the eyes of law. If benefits are to be claimed, the registration of society under the Act us required. An unregistered society cannot claim benefits under the Income-tax Act.

MEGA FIRM

40. Write a short note on: Mega Firm

Ans.: Meaning: Mega Firm or Multidisciplinary Firm (MDF) can be described as a Partnership firm with more than 25 partners. A firm which provides core professional service of a particular profession along with the allied and ancillary service with equal competence under one roof is a multidisciplinary firm.

Single window business solutions: Company and corporate law is core knowledge for company secretaries, however, they can acquire expertise in any other area like direct-indirect taxation, labour laws, economic laws, finance, accounting, insurance, international business and IPRs and they may be in position to provide single window business solutions.

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Shift from traditional approach: MDF is a step towards mega firm. It is paradigm shift from traditional approach of 10 × 10 offices to a global office. MDF will put the professionals in general and Company Secretaries in particular on fast track. Large firms will still become larger and one day the global business enterprise will call them a "Mega Firm".

Scope for Multidisciplinary/Mega Firms: Keeping in view of the present needs of the corporate and multi-dimensional growth of CS profession especially in the areas of practicing in the areas of Corporate Laws, Labour laws, RBI/FEMA, acting as Secretarial Audit, Resolution Professional Insolvency Bankruptcy Code, GST Practitioner there is a need to structure and build the Multidisciplinary/Mega Firms. There is a huge demand and scope for a multifunctional firm, where several services are provided under one roof.

Timely and quality services to clients: Clients always have a comfort level in dealing with such firms. They are assured of timely and quality service since even if one of the Partners is not available for consultancy they can bank on the others. Unless there are MDF/Mega firms, it may not be possible to cater to the bigger assignments.

41. Discuss provisions relating to formation of Multidisciplinary Firm under the Company Secretaries Regulations, 1982.

Ans.: Multidisciplinary Firm: According to Regulation 165A of the Company Secretaries Regulations, 1982 a member in practice may form multidisciplinary firm with the member of other professional bodies as prescribed under regulations 168A and 168B of the Company Secretaries Regulations, 1982, in accordance with the regulating guidelines of the Council for functioning and regulation of such multidisciplinary firm.

Other Professional bodies [Regulation 168A]:

(*i*) For the purposes of clauses (*2*), (*3*) & (*5*) of **Part I** of the **First Schedule** to the Act, a person has to be member of any of the following, namely:

- (*a*) The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949.
- (*b*) The Institute of Cost & Works Accountants of India established under the Cost and Works Accountants Act, 1959.
- (*c*) Bar Council of India established under the Advocates Act, 1961.
- (*d*) The Indian Institute of Architects established under the Architects Act, 1972.
- (*e*) The Institute of Actuaries of India established under the Actuaries Act, 2006.
- (*f*) The membership of the professional bodies or institutions whose qualifications relating to Company Secretaryship are recognized by the Council under section 38(2) of the Act.

(*ii*) For the purposes of clauses (*2*), (*3*) & (*5*) of **Part I** of the **First Schedule** to the Act, the following shall be the persons qualified in India, namely:

- (*a*) Chartered Accountant within the meaning of the Chartered Accountants Act, 1949.

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(*b*) Cost Accountant within the meaning of the Cost & Works Accountants Act, 1959.

(*c*) Actuary within the meaning of the Actuaries Act, 2006.

(*d*) Bachelor in Engineering from a University established by law or an institution recognized by law.

(*e*) Bachelor in Technology from a University established by law or an institution recognized by law.

(*f*) Bachelor in Architecture from a University established by law or an institution recognized by law.

(*g*) Bachelor of Law from a University established by law or an institution recognized by law.

(*h*) Master in Business Administration from Universities established by Law or Technical Institutions recognized by All India Council for Technical Education.

Membership of professional body for partnership [Regulation 168B]: For the purposes of entering into partnership under clauses (*4*) & (*5*) of **Part I** of the **First Schedule** to the Act, a person shall be a member of any of the following professional bodies, namely:

(*a*) The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949.

(*b*) The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959.

(*c*) Bar Council of India established under the Advocates Act, 1961.

(*d*) The Institute of Engineers or Engineering from a University established by law or an institution recognized by law.

(*e*) The Indian Institute of Architects established under the Architects Act, 1972.

(*f*) The Institute of Actuaries of India established, under the Actuaries Act, 2006.

(*g*) Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under Section 38(2) of the Act.

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8 CHAPTER FINANCIAL SERVICES ORGANIZATIONS

NBFC

1. What do you mean by Non-Banking Financial Company? Enumerate the powers of Reserve Bank of India vested in the RBI Act for regulating and supervising the Non- Banking Financial companies. [Dec. 2018 (4 Marks)]

Ans.:

(1) Meaning of NBFC: Non-banking financial company means –

(*a*) A financial institution which is a company.

(*b*) A non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner.

(*c*) Such other non-banking institution or class of such institutions, as the RBI may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

(2) Registration with RBI: In terms of Section 45-IA, all Non-Banking Financial Companies have to be mandatorily registered with the RBI.

(3) Regulatory Framework: The Reserve Bank of India (RBI) is entrusted with the responsibility of regulating and supervising the Non-Banking Financial Companies by virtue of powers vested in **Chapter III-B** of the Reserve Bank of India Act, 1934.

(4) Objectives: The regulatory and supervisory objective is:

- To ensure healthy growth of the financial companies;
- To ensure that these companies function as a part of the financial system within the policy framework, in such a manner that their existence and functioning do not lead to systemic aberrations.

(5) Surveillance & Supervision by RBI: The quality of surveillance and supervision exercised by the RBI over the NBFCs is sustained by keeping pace with the developments that take place in non-banking sector of the financial system.

(6) Powers of RBI: The Reserve Bank has been given the powers under the RBI Act, 1934 to register, lay down policy, issue directions, inspect, regulate, supervise and exercise surveillance over NBFCs.

(7) Penal action by RBI:

- The RBI can penalize NBFCs for violating the provisions of the RBI Act, 1934 or the directions or orders issued by RBI under the Act.

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- Following penal action can be taken by the RBI:
  - Cancellation of the Certificate of Registration issued to the NBFC.
  - Prohibiting the NBFC from accepting deposits and alienating their assets.
  - Filing a winding-up petition.

2. State the requirements for registration of Non-Banking Finance Company with Reserve Bank of India under the Reserve Bank of India Act, 1934. [Dec. 2019 (4 Marks)]

Ans.:

(*a*) **Registration of NBFC:** In terms of Section 45-IA, all Non-Banking Financial Companies have to be mandatorily registered with the RBI.

(*b*) **Requirement of registration:** No NBFC shall commence or carry on the business of a non-banking financial institution without –

(*a*) Obtaining a certificate of registration.

(*b*) Having the **net owned fund** of **₹ 25 lakh** or such other amount, **not exceeding ₹ 100 Crore**, as the RBI may specify.

The RBI may notify different amounts of net owned fund for different categories of non-banking financial companies.

Every NBFC shall make an application for registration to the RBI in prescribed form.

(*c*) **Conditions for registration of NBFC:** The RBI, for the purpose of considering the application for registration, may require to be satisfied by an inspection of the books of NBFC or otherwise that the following conditions are fulfilled:

- **Ability of the NBFC to pay depositors:** The NBFC is or shall be in a position to pay its present or future depositors in full as and when their claims accrue.
- **Affairs of the NBFC:** Affairs of the NBFC are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors.
- **Character of the management:** General character of the management or the proposed management of the NBFC shall not be prejudicial to the public interest or the interests of its depositors.
- **Capital structure:** The NBFC has adequate capital structure and earning prospects.
- **Public interest:** Public interest shall be served by the grant of certificate of registration to the NBFC to commence or to carry on the business of India.
- **Monetary stability & economic growth:** The grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, and economic

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growth considering such other relevant factors which the RBI may specify.

- **Other conditions:** Any other condition, fulfilment of which in the opinion of the RBI, shall be necessary to ensure that the commencement of or carrying on of the business in India by NBFC shall not be prejudicial to the public interest or in the interests of the depositors.

(*d*) **Certificate of registration:** The RBI may after being satisfied that the specified conditions are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

3. Distinguish between: Banks and Non-Banking Financial Companies

NBFCs lend and make investments and hence their activities are akin to that of banks; however, there are a few differences between them. Explain.

[Dec. 2022 (4 Marks)]

Ans.: Following are the main points of distinction between Banks and Non-Banking Financial Companies:

Points	Banks	Non-Banking Financial Companies
Meaning	Bank is a RBI authorized financial institution that aims at providing banking services to the general public.	NBFC is a company engaged in the business of loans and advances, acquisition of shares, stocks, bonds, debentures and securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business and chit business.
Demand deposits	Banks can accept terms deposits as well as demand deposits.	NBFCs can accept only term deposit but not demand deposits.
Payment & settlement system	Banks form part of the payment and settlement system.	NBFCs do not form part of the payment and settlement system.
Cheque	Banks can issue cheques drawn on itself.	NBFCs cannot issue cheques drawn on itself.
Credit creation	Banks are termed as creators of credit through money multiplier activity.	NBFCs cannot be termed as creators of credit.
Transaction services	Banks provides a variety of transaction services.	NBFCs do not facilitate transaction services.
Reserve ratios	Banks are required to maintain reserve ratios with RBI.	NBFCs are not required to maintain reserve ratios with RBI.
Deposit insurance	Banks can the avail the facility of taking insurance on amount deposited by public.	NBFCs cannot take insurance on amount deposited by public.

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4. Explain the various advantages of NBFCs.

Ans.: Various advantages of NBFCs are as follows:

(1) **NBFCs plays important role in Indian economy:** In India where 70% of the population lives in rural areas, incorporation of a non-banking financial firm is essential as they are small players who provide loans, chit–funds etc. Many companies have come forward and registered themselves with RBI to attain the status of NBFC.

NBFC's are an integral part of the Indian economy and financial sector as they enhance competition among the companies of the financial sector. NBFC with their low-cost operations, simple sanction procedure and flexibility has given it an edge over the commercial banking sector. It is an important financial mediator, particularly for the retail and small-scale sector.

(2) **Competitive Interest Rates:** Rate of interest is one of the main aspects of all types of loans. Non-Banking Financial Sectors have started to concentrate on this area in the recent decades and have brought down the interest rates to either equal to bank lending rates or at times even lower to bank rates. With all the other benefits when rate of interest is also lowered, borrowers found this more easy and affordable. This has also resulted in lower EMI (Equated Monthly Instalment) for borrowers.

(3) **Quick Processing:** At banks, it is very important that the applicant should fulfil the eligibility criteria but NBFC are lenient in this aspect. This makes loan approval easier, smoother process and quicker. Most of the times, people apply for loan when they are in immediate need of money. NBFCs have taken this as an opportunity to meet the demand by quickly processing the loans at competitive rate of interest. At times, borrowers are even ready to compromise on the interest rates if the loan amount is huge and if they could get it approved quickly.

(4) **Less Rules & Regulations:** NBFC are incorporated under the Companies Act, 2013 though regulated by the RBI, the rules and regulations for lending are not as stringent as banks. This helps borrowers to get loans easily. In view of less complicated loan processing requirements, borrowers are highly satisfied. Of course, the risk of default is high with NBFC and thus interest rates and other charges will be accordingly priced by the NBFC. Even the loan amount approved will be quite lesser than the collateral value. This is due to the high risk of default. NBFC's do not have statutory reserve ratios and can open branches at its will.

(5) **Loan available for Individuals with Poor Credit Rating:** Individuals with poor credit rating generally will not get loans from banks. The reason for this is banks consider borrowers are high-risk individuals if the credit scoring is low. Unless the credit score is above 600-650, it is very difficult to get a loan sanctioned from banks. On the other hand, loans will be offered to individuals with low credit score by NBFCs but most of the time the interest rates for such borrowers will be higher than market rates. Due to these aforementioned advantages, most of the NBFCs are growing.

(6) **NBFCs offer variety of loans:** With regard to offering loans, banks and NBFCs will offer business, personal and retail loans. This is totally on the basis of the repayment capacity of the borrower. Most of the corporate sector

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prefers banks; however retail sector chooses NBFCs over banks. Simple loans such are vehicle financing loans, gold loans, home loans and durable loans are offered by NBFCs and customer satisfaction ratio is high here. NBFC sector is also set to expand even further in the coming days.

(7) **Caters customer needs:** Another major advantage of NBFCs is the ground level understanding of their customer's profile and the need for their credit, which gives them an edge, as their ability to customize their products according to client needs. The continued better performance from NBFCs has given rise to an uptick of 15% customer satisfaction.

5. Write a short note on: Scale Based Regulatory Framework for NBFCs

Ans.: In October 2021, RBI notified scale-based regulations for NBFCs, which is effective from 1st October, 2022. With these regulations, RBI aims to increase transparency in NBFC operations through greater disclosures and improved governance standards.

The revised framework envisages a progressive increase in the intensity of regulation and is thus visualized as a four layer pyramid – a base layer, middle layer, upper layer, and top layer. With each layer, regulations become stricter.

(*a*) **Base Layer:** The Base Layer shall comprise of non-deposit taking NBFCs below the asset size of ₹ 1,000 Crore, Peer to Peer Lending Platform, Account Aggregator, Non-Operative Financial Holding Company and NBFCs not availing public funds and not having any customer interface.

(*b*) **Middle Layer:** The Middle Layer shall consist of all deposit taking NBFCs, non-deposit taking NBFCs with asset size of ₹ 1,000 Crore and above and NBFCs undertaking the activities of Standalone Primary Dealers, Infrastructure Debt Fund, Core Investment Companies, Housing Finance Companies and Infrastructure Finance Companies.

(*c*) **Upper Layer:** The Upper Layer comprise of those NBFCs which require enhanced regulatory supervision. The top ten eligible NBFCs in terms of their asset size shall always reside in the upper layer, irrespective of any other factor.

(*d*) **Top Layer:** The Top Layer is empty. This layer can get populated if the RBI is of the opinion that there is a substantial increase in the potential systemic risk from specific NBFCs in the Upper Layer. Such NBFCs shall move to the Top Layer from the Upper Layer.

6. Differentiate between 'Asset Finance Company' and 'Infrastructure Finance Company'. [June 2023 (4 Marks)]

Ans: 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 which supports productive or economic activity of the organization to be financed.

Such type of NBFC may finance large number of assets such as –

- Automobiles,
- Tractors,
- Lathe machines,

- Generator sets,
- Earth moving and material handling equipments,
- Moving on own power and
- General purpose industrial machines.

Principal business for this purpose is defined as aggregate of financing real or physical assets supporting economic activity and income arising there from is not less than 60% of its total assets and total income respectively.

Asset finance company can either be deposit-taking or non-deposit taking.

Infrastructure Finance Company: IFC is a non-banking finance company means non-deposit taking NBFC that fulfils the following criteria:

(*a*) Which deploys at least 75% of its total assets in infrastructure loans

(*b*) Minimum Net Owned Funds of ₹ 300 Crore

(*c*) Minimum credit rating of 'A' or equivalent

(*d*) CRAR of 15% (with a minimum Tier-I capital of 10%). [*CRAR means capital to risk weighted assets ratio*]

7. Explain the procedure for registration of Asset Reconstruction Company (ARC). [June 2023 (4 Marks)]

Ans.: Asset Reconstruction Company – Registration Process:

- 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 RBI.
- Asset Reconstruction Companies (ARCs) are governed by the Securitization Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 issued by the RBI as amended from time to time.
- Every ARC shall apply for registration in form specified by the RBI and obtain a certificate of registration from the RBI as provided under section 3 of the SARFAESI Act, 2002.
- The ARCs seeking registration from the RBI shall submit their application specified by the RBI, duly filled in with all the relevant annexures/supporting documents to the Chief General Manager-in-Charge, Department of Non-Banking Regulation, Central Office, RBI, Centre 1, World Trade Centre, Cuffe Parade, Colaba, Mumbai.
- An ARC, which has obtained a certificate of registration issued by the RBI, can undertake both securitization and asset reconstruction activities.
- An ARC shall commence business within 6 months from the date of grant of Certificate of Registration by the RBI. RBI may grant extension for further period not exceeding 12 months.
- Provisions of Sections 45-IA, 45-IB and 45-IC of RBI Act, 1934 shall not apply to NBFC, which is ARC registered with the RBI under section 3 of the SARFAESI Act, 2002.

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8. Rakesh is interested to form a Non-Banking Financial Company (NBFC) for carrying business of providing micro finance in the rural areas in the name of 'SABKO Loan Company Ltd.'. Advice him about the various categories of NBFCs and let him know as to which category of NBFC will suit him for applying the license. [Dec. 2018 (5 Marks)]

Ans.: Before applying for NBFC License, the type and category of NBFC license must first be determined. Following are the categories of NBFC Companies:

(1) **Asset Finance Company (AFC):** An Asset Finance Company is a company which is a financial institution carrying on as its principal business the financing of physical assets such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines.

(2) **Investment Company:** An Investment Company is any company which is a financial institution carrying on as its principal business the acquisition of securities (shares/bonds/other financial securities).

(3) **Loan Company:** Loan Company is any company which is a financial institution carrying on as its principal business the providing of finance whether by making loans or advances or otherwise for any activity other than its own but does not include an Asset Finance Company.

(4) **Infrastructure Finance Company:** Infrastructure Finance Company is a non-banking finance company that deploys at least 75% of its total assets in infrastructure loans, has a minimum Net Owned Funds of ₹ 300 Crore, maintains a minimum credit rating of "A" or equivalent with a Capital to Risk Asset Ratio of 15%.

(5) **Systemically Important Core Investment Company:** Systemically Important Core Investment Company is an NBFC with an asset size of over ₹ 100 Crore, accepts public funds, and is involved in the business or acquisition of shares and securities subject to the fulfilment certain conditions.

(6) **Infrastructure Debt Fund:** Infrastructure Debt Fund is a company registered as NBFC to facilitate the flow of long term debt into infrastructure projects. Infrastructure Debt Funds raise resources through issue of Rupee or Dollar denominated bonds of minimum 5 year maturity. Only Infrastructure Finance Companies can sponsor such companies.

(7) **NBFC — Micro Finance Institution:** Micro Finance Institution is a non-deposit taking NBFC that is engaged in micro finance activities.

(8) **NBFC Factor:** NBFC Factor is a non-deposit taking NBFC engaged in the principal business of factoring.

Looking into the features of various NBFCs, Non-Banking Financial Company – Micro Finance Institution (NBFC-MFI) will suit Mr. Rakesh as he is incorporating NBC for carrying business of providing micro finance in the rural areas.

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9. Bhaskar is presently running a business of finance. He has planned to promote an Infrastructure Finance Company along with his friends. He seeks your advice to know whether it is a Non-Banking Finance Company requiring Reserve Bank of India's registration and criteria to be satisfied by such Company. Also clarify on how Net owned Fund is calculated.
[Dec. 2019 (5 Marks)]

Or

Define the term 'Net Owned Fund'. [Dec. 2020 (4 Marks)]

Ans.: Infrastructure Finance Company: IFC is a non-banking finance company means non-deposit taking NBFC that fulfils the following criteria:

(*a*) Which deploys at least 75% of its total assets in infrastructure loans

(*b*) Minimum Net Owned Funds of ₹ 300 Crore

(*c*) Minimum credit rating of 'A' or equivalent

(*d*) CRAR of 15% (with a minimum Tier-I capital of 10%). [*CRAR means capital to risk weighted assets ratio*]

Net Owned Fund [Explanation to Section 45-IA of RBI Act, 1934]: Net Owned Fund means:

(*a*) The aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the company after deducting therefrom:
- Accumulated balance of loss
- Deferred revenue expenditure
- Other intangible assets

(*b*) Further reduced by the amounts representing:

(*i*) Investments of such company in shares of:
- Its subsidiaries
- Companies in the same group
- All other non-banking financial companies.

(*ii*) Book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with:
- Subsidiaries of such company
- Companies in the same group, to the extent such book value exceeds 10% of (*a*) above.

Registration with RBI: In terms of Section 45-IA, all Non-Banking Financial Companies have to be mandatorily registered with the RBI.

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

(*i*) Infrastructure Debt Fund Company

(*ii*) Asset Finance Company

(*iii*) Merchant Banking Companies [June 2021 (3 Marks)]

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Ans.:

(*i*) **Infrastructure Debt Fund Company:** It is a company registered as NBFC to facilitate the flow of long-term debt into infrastructure projects. Infrastructure Debt Funds raise resources through issue of Rupee or Dollar denominated bonds of minimum 5 year maturity.

Such Company requires registration as NBFC with RBI.

(*ii*) **Asset Finance Company:** An Asset Finance Company is a company which is a financial institution carrying on as its principal business of the financing of physical assets such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines.

Such Company requires registration as NBFC with RBI.

(*iii*) **Merchant Banking Companies:** Regulated by Securities & Exchange Board of India. Law which regulates the activities of the Merchant Bank in India are SEBI Act, 1992 and the SEBI (Merchant Bankers) Regulations 1992.

Such Company is not required to be registered as NBFC with RBI.

11. What are the various classes of Non-banking Financial Companies on the basis of their activities? [Dec. 2021 (4 Marks)]

Ans.: Classes of NBFCs on the basis of their activities are given below:

Classes of NBFCs	Activity
Asset Finance Company	Financing of physical assets including automobiles, tractors and generators.
Loan Company	Provision of loan finance.
Investment & Credit Company	Investment and provision of finance.
Investment Company	Acquisition of securities for purpose of selling.
Infrastructure Finance Company	Provision of infrastructure loans.
Systemically Important Core Investment Company	Makes investments and loans to group companies.
Infrastructure Debt Fund Company	Facilitation of flow of long-term debt into infrastructure projects.
Micro Finance Company	Credit to economically disadvantaged groups.
Factor Company	Acquisition of receivables or extending loans against the security interest of the receivables at a discount.
Operative Financial Holding Company	Facilitation of promoters/promoter groups in setting up new banks.
Mortgage Guarantee Company	Mortgage guarantee business.
Account Aggregator Company (NBFC-AA)	Collecting and providing information about a customer's financial assets in a consolidated, organized and retrievable manner to the customer or others as specified by the customer.
Peer to Peer Lending Company	Providing an online platform to bring lenders and borrowers together to help mobilize funds.

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12. State the circumstances under which the Reserve Bank of India may cancel the certificate of registration granted to a Non-Banking Financial Company (NBFC). [June 2023 (4 Marks)]

Ans.: Cancellation of Certificate of Registration of NBFC: As per section 45-IA(*6*) of the Reserve Bank of India Act, 1934, the RBI may cancel a certificate of registration granted to NBFC in following cases:

(*i*) If it ceases to carry on the business of a non-banking financial institution in India.

(*ii*) If it fails to comply with any condition subject to which the certificate of registration had been issued to it.

(*iii*) If at any time it fails to fulfil any of the conditions such as adequate capital structure and earning prospects.

(*iv*) If it fails to comply with any direction issued by the RBI.

(*v*) If it fails to maintain accounts in accordance with the requirements of any law or any direction or order issued by the RBI.

(*vi*) If it fails to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the RBI.

(*vii*) If it has been prohibited from accepting deposit by an order made by the RBI and such order has been in force for a period of not less than 3 months.

Opportunity of being heard: Before making any order of cancellation of certificate of registration, such NBFC shall be given a reasonable opportunity of being heard.

HOUSING FINANCE COMPANIES (HFC)

13. What do you understand by 'Housing Finance Company (HFC)'? What are the basic registration requirements of such companies?

Ans.:

(1) **Housing Finance Company (HFC) – Meaning:** The Housing Finance Company if form of non-banking financial company which is registered under the Companies Act, 1956/2013 and engaged in the principal business of *financing of acquisition or construction of houses* that includes the development of plots of lands for the construction of new houses.

(2) **Registration:** Apart from registration under the Companies Act, 2013, Housing Finance Company (HFC) also requires registration with the National Housing Bank Act, 1987 for commencing or carrying on the business of housing finance.

(3) **Conditions for registration:** Based on the provisions of section 29A of the National Housing Bank Act 1987, no Housing Finance Company shall start to carry out its operations of providing housing loans unless the same had met all the accompanying guidelines.

(*a*) **Must be an NBFC:** The business entity that wants to operate as a Housing Finance Company must acquire registration as the Non-Banking Financial Company from the RBI.

(*b*) **Net Owned Funds:** It shall be noted that the Net owned fund of a Housing Finance Company must be at least ₹ **20 Crore**. Therefore, an applicant needs to satisfy the requirements of net worth for obtaining Housing Finance Company Registration.

(*c*) **Registration under the Companies Act, 2013:** The Housing Finance Company must be registered as company under the Companies Act 2013.

(*d*) **Housing Finance Activities as Object Clause:** It is the last but the most important requirement of all that the objects of this type of company must mention for financing housing loans and other commercial complexes. Besides providing finance, the said company must also have the predictions of earning.

(4) Consequences of non-registration: Conduct of business without obtaining certificate of registration is an offence punishable under the provisions of the National Housing Bank Act, 1987. NHB can also file application for winding-up of such HFC, under section 33B of the said Act.

(5) Different categories of HFCs registered with NHB: HFCs are categorized in terms of the type of liabilities, by NHB, into Deposit and Non-Deposit accepting HFCs and are issued Certificate of Registration accordingly.

14. Is the procedure for incorporating Housing Finance Company is same as any other Company? Elucidate. [Dec. 2022 (4 Marks)]

Ans.: Registration under the Companies Act, 2013: The procedure for incorporating Housing Finance Company (HFC) is the same as any other company. While registering under the Companies Act, 2013, principal business, to be stated in the MOA, shall be providing finance for housing and related matters.

Registration under the National Housing Bank Act, 1987: After registering a company under the Companies Act, 2013 registration process under the National Housing Bank Act, 1987 will have to be taken.

Objects & net owned fund:

(*i*) Housing Finance Company should primarily transacts or has as one of its principal objects of transacting the business of providing finance for housing, whether directly or indirectly.

(*ii*) Housing Finance Company should have a minimum net owned fund of ₹ 20 Crore.

Conditions for registration: NHB after satisfying itself on the fulfilment of following conditions provided under section 29A(4) of the National Housing Bank Act, 1987 may grant a Certificate of Registration:

- HFC is or shall be in a position to pay its present or future depositors in full as and when their claims accrue.
- Affairs of the HFC are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors.
- General character of the management or the proposed management of the HFC shall not be prejudicial to the public interest or to the interests of its depositors.

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- HFC has adequate capital structure and earning prospects.
- Public interest shall be served by the grant of certificate of registration to the HFC to commence or carry on the business in India.
- Grant of certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country.
- Any other condition, fulfilment of which in the opinion of the RBI, shall be necessary to ensure that the commencement of or carrying on the business in India by a HFC shall not be prejudicial to the public interest or in the interests of the depositors.
- The RBI may, wherever it considers necessary so to do, require the National Housing Bank to inspect the books of such housing finance institution and submit a report to the RBI for the purpose of considering the application.
- The RBI may, after being satisfied that specified conditions are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

Certificate of registration: HFCs are categorized in terms of the type of liabilities, by NHB, into Deposit and Non-Deposit accepting HFCs and are issued Certificate of Registration accordingly.

15. What are the benefits of Housing Finance Companies?

Ans.: Following are the various benefits of Housing Finance Companies:

(*a*) **Creates employment:** Among the financial services, housing finance creates more employment opportunities, both directly and indirectly.

(*b*) **More demand to other industries:** Industries such as cement, brick manufacturing, sanitary products, electrical fittings and glass industries experience more demand due to house construction.

(*c*) **Prevents migration of labour:** Rural housing develops not only rural areas but prevents migration of labour to urban areas.

(*d*) **More infrastructure facilities:** Housing finance helps in creation of more houses which results in building up more infrastructure facilities, such as roads, electricity generation, drinking water facilities, etc.

(*e*) **Reduces congestion in urban areas:** Factories or industrial establishments create townships by providing more housing facilities to their employees. Housing finance thereby reduces congestion in urban areas.

(*f*) **Remodelling of the existing houses:** Due to housing finance, there is a vertical expansion and rebuilding of dilapidated houses and remodelling of the existing houses.

(*g*) **Reflect culture of country:** Housing facilities not only improve, they also reflect the culture of the country. Chandigarh city is an example for modern housing which has been built by a French architect.

(*h*) **Modern housing facilities:** Non-conventional energy gets popularized due to modern housing facilities which is one of the major benefits of housing finance.

(*i*) **Incentives from Pradhan Mantri Awas Yojana:** At present, the macro environment is extremely favourable for housing finance companies. The Modi government's incentives in terms of allocation related to Pradhan Mantri Awas Yojana (PMAY) of ₹ 23,000 Crore would provide the much-needed momentum to the sector.

(*j*) **Indexation benefits in capital gain tax:** The holding period for capital gains tax in case of immovable properties has been reduced from three to two years. Moreover, the Finance Minister has proposed to shift the base year for indexation from 1.4.1981 to 1.4.2001 for all classes of assets, including immovable property. This step would allow more realistic calculation of the cost of acquisition of the house while claiming indexation benefits.

(*k*) **Low cost of finance:** It is expected that with several associated benefits and the advantage of digital documents, the cost of finance is expected to come down, which may be passed on to the real buyers.

(*l*) **Immense growth in sector:** In the days to come, supported by growth drivers such as rising disposable income, personal income tax benefits, increasing urbanization and economic growth of tier II and tier-II cities, the sector is likely to see immense growth.

16. Define the term 'Net Owned Fund'. [Dec. 2020 (4 Marks)]

Or

State the net owned fund requirement for Housing Finance Company and also clarify as how it is calculated?

Ans.: Net Owned Fund (NOF) Requirement: In exercise of the powers conferred by Section 29A(1)(*b*) of the National Housing Bank Act, 1987, the RBI had specified ₹ 20 Crore as the minimum net owned funds required for a company to commence housing finance as its principal business or carry on the business of housing finance as its principal business.

However, a housing finance company holding a Certificate of Registration and having net owned fund of less than ₹ 20 Crore, may continue to carry on the business of housing finance, if such company achieves net owned fund of ₹ 15 Crore by March 31, 2022 and ₹ 20 Crore by March 31 2023.

Statutory auditor's certificate for NOF: It will be incumbent upon such HFCs whose NOF currently stands below ₹ 20 Crore, to submit a statutory auditor's certificate to RBI within a period of one month evidencing compliance with the prescribed levels as at the end of the period indicated above.

Consequences for failing to achieve NOF:

- HFCs failing to achieve the prescribed level within the stipulated period shall not be eligible to hold the Certificate of Registration as HFCs and registration for such HFCs shall be liable to be cancelled.
- Such companies, who wish to be treated as NBFC – Investment and Credit Companies (NBFC-ICCs), will be required to approach RBI for conversion of their Certificate of Registration from HFC to NBFC – ICC.
- Application for such conversion should be submitted with all supporting documents meant for new registration together with an auditor's certificate on

principal business criteria (PBC) and necessary Board resolution approving the conversion.

Net Owned Fund [Section 29A of the National Housing Bank Act, 1987]: Net Owned Fund means:

(*a*) The aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the housing finance institution after deducting therefrom:

- Accumulated balance of loss
- Deferred revenue expenditure
- Other intangible assets

(*b*) Further reduced by the amounts representing:

(*i*) Investments of such company in shares of:

- Its subsidiaries
- Companies in the same group
- All other housing finance institution which are companies.

(*ii*) Book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with:

- Subsidiaries of such company
- Companies in the same group, to the extent such book value exceeds 10% of (*a*) above.

17. In what circumstance the certificate of registration granted to a housing finance company may be cancelled under the National Housing Bank Act, 1987?

Ans.: As per Section 29A(*6*) of the National Housing Bank Act, 1987, the RBI may cancel a certificate of registration granted to a housing finance institution in following cases:

- It ceases to carry on the business of a housing finance institution in India.
- It has failed to comply with any condition subject to which the certificate of registration had been issued.
- It fails to comply with Section 29A(*4*).
- It fails to comply with any direction issued by the RBI or National Housing Bank.
- It fails to maintain accounts in accordance with the requirement of any law or any direction or order issued by the RBI or National Housing Bank
- It fails to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the RBI or National Housing Bank.
- It has been prohibited from accepting deposit by an order made by the National Housing Bank and such order has been in force for a period of not less than 3 months.

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Opportunity for taking necessary steps to comply with provisions or fulfilment of conditions: Before cancelling a certificate of registration, the RBI, shall give an opportunity to such company on such terms as the RBI may specify for taking necessary steps to comply with provisions or fulfilment of conditions.

Opportunity of being heard: Before making any order of cancellation of certificate of registration, such insitution shall be given a reasonable opportunity of being heard.

ASSET RECONSTRUCTION COMPANY (ARC)

18. With reference to Asset Reconstruction Company, answer the following:
(*i*) Who regulates the Asset Reconstruction Companies in India?
(*ii*) What are the objectives of such companies?

Ans.:

(*i*) **Regulatory Framework:** Asset Reconstruction Company (Securitization Company/Reconstruction Company) is a company registered under section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002.

Regulator: Asset Reconstruction Companies are regulated by RBI as a Non-Banking Financial Company (under section 45-I(*f*)(*iii*) of RBI Act, 1934).

Exemptions: RBI has exempted ARCs from the compliances of sections 45-IA, 45-IB & 45-IC of the RBI Act, 1934. ARC functions like an AMC within the guicelines issued by RBI.

(*ii*) **Objectives of Asset Reconstructions Companies:**

(*a*) **Manage and recover NPAs:** Asset Reconstructions companies are created to manage and recover Non-Performing Assets acquired from the banking system.

(*b*) **Recovery of bad loans & NPAs:** Banks and financial institutions with a large proportion of their bad loans or Non-Performing Assets can sell to a separate entity *i.e.* Asset Reconstruction Company. Then Asset Reconstruction Companies recover a sum through attachment, liquidation etc.

(*c*) **To help banks in cleaning NPAs:** Asset Reconstructions companies help banks in making clean their books by reducing Non-Performing Assets.

(*d*) **To make profit by buying NPAs:** Asset Reconstruction Companies are also making profit by buying Non-Performing Assets at a lower price.

19. Group of some persons approached to you for incorporation of Asset Reconstruction Company (ARC). As a Practicing Company Secretary advise them conditions/eligibility criteria for registering Asset Reconstruction Company.

Ans.: There are specific conditions or eligibility criteria for registering an ARC. The following criteria have to be sufficed for this:

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1. The company must be registered as a company under the Companies Act, 2013.
2. After the company is formed, it must be eligible for registration under the RBI under the respective statutory legislation.
3. There should not be any losses incurred by the company in the previous or preceding 3 financial years.
4. If there is a process for the realization of assets, then sufficient arrangement must be carried out for the purpose of securitization and asset reconstruction.
5. The ARC must be able to pay all the periodical returns.
6. The company must be capable of redeeming the amount of investment which is made by qualified buyers and other investors in the company.
7. Directors must have sufficient experience and exposure in matters related to financial affairs which include reconstruction, insolvency, financial assets and other areas related to regulation.
8. There must be no criminal convictions against the directors. The directors and shareholders should not have committed any acts which affect their moral turpitude. Any acts which would lead to prosecution would also be covered.
9. All the key management executives or individuals should pass the requirements related to the fit and proper person test in order to comply with the requirements of the act. The requirements related to the fit and proper test would be notified by the RBI from time to time. This criteria and requirement would also be applicable to the sponsors of the company.
10. The entity is responsible for complying with the financial and prudential norms as set by the RBI.
11. There are specific guidelines which have to be followed by the RBI for registration of Asset Reconstruction Company in India.

As long as the above criteria or requirements have been met by the asset reconstruction company, the applicant could go ahead with the process of registration.

20. 'Asset Reconstruction Companies are created to manage and recover Non-Performing Assets' – Comment referring the functions and benefits of Asset Reconstruction Companies. [Dec. 2019 (4 Marks)]

Or

ARCs can maximize recovery value with minimum cost. Explain the benefits of incorporating an Asset Reconstruction Company (ARC). [June 2022 (4 Marks)]

Ans.: Background: In India the problem of recovery from NPAs was recognized in 1997 by Government of India. The Narasimhan Committee Report envisaged creation of an "Asset Recovery Fund" to take the NPAs off the lenders books at a discount.

Asset Reconstruction Company: Asset Reconstruction Company is a company registered under Section 3 of the SARFAESI Act, 2002. It is regulated by RBI as NBFC.

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Approach to Non-Performing Loans: ARC has been set up to provide a focused approach to Non-Performing Loans resolution issue by:

(*i*) Isolating Non-Performing Loans from the Financial System.

(*ii*) Freeing the financial system to focus on their core activities.

(*iii*) Facilitating development of market for distressed assets.

Functions of ARC: ARC performs the following functions:

(*a*) Acquisition of financial assets

(*b*) Change or takeover of Management/Sale or Lease of Business of the Borrower.

(*c*) Rescheduling of Debt

(*d*) Enforcement of Security Interest

(*e*) Settlement of dues payable by the borrower

Benefits of incorporating an Asset Reconstruction Company (ARC):

- As the cash realization 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.
- 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.
- 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.

MICRO FINANCE INSTITUTIONS (MFIs)

21. What is a Micro Finance Institution?

Ans.: MFIs are financial institutions working towards the upliftment of the needy and underprivileged section of the society by providing short-term loans to set up their own venture. They take a minimum or very calculated risk and fund the interested borrowers to help them get trained, setup and run a small-scale business. Micro finance institutions apart from giving financial help also educate people about the current market trends and help them compete in the present market.

These financial institutions usually do not take any guarantee or ask for any kind of collateral from the borrower to lend money. This is where these institutions stand out from the traditional banking organizations. While banks are quite reluctant about lending money to the poor unemployed crowd considering them as high-risk components, MFIs are specially dedicated to provide all the necessary financial help to this section of the society. These organizations not only take the risk of funding them, but also work with them to ensure that the offered money gets utilized appropriately. They contribute in every possible way to uplift the under banked section and make them financially independent..

Types of MFIs in India: MFIs operate in a number of forms and shapes in India. Though each of them have different formation and work nature, they all provide financial help to the needy section of the society in the form of loans and other financial products. Here are the details of the various types of MFIs in India:

- JLG or Joint Liability Group
- SHG or Self Help Group
- The Grameen Bank Model
- Rural Co-operatives

22. Write a short note on: Key features/characteristics of Micro Finance Institutions

Ans.: There are a number of features that make the Micro Finance Institutions different from the formal banking organizations. Here are some of the key features of the MFIs in India:

- **Loans to low-income group:** These institutions offer loans to individuals who belong to the low-income group. In most of the cases, the loans are provided by these organizations for income-generation purposes.
- **Micro loans:** The loans that are offered by these institutions are of small amount and are known as micro loans.
- **No security:** No collateral for loan is required. MFIs give loans to people who want to start up a business of their own without any security.
- **Period of loan:** MFIs provide loans to the borrowers for a short period, once they repay the loan they can again opt for another one.
- **Transaction cost:** Transaction cost Micro Finance Institutions is low.
- **Repayment of loans:** The repayment frequency of the micro loans offered by MFIs is high and the borrower needs to repay the amount at quick intervals.

23. "Concept of self help group" is the most exciting discovery in the context of Micro finance. Explain the terms and features of micro finance.
[Dec. 2019 (4 Marks)]

Ans.:

- NABARD has defined micro finance as "provision of thrift, credit and other financial services and products of very small amounts to the poor in rural, semi-urban and urban areas provided to customers to meet their financial needs; with only qualification that – (*a*) transactions value is small and (*b*) customers are poor."
- Microfinance provides financial services to those whose income is small and unstable. These people are in need of credit facilities for several reasons, some of which are listed below:
  - (*a*) Their needs are small and arise suddenly.
  - (*b*) The banks demand collateral security which they cannot provide.
  - (*c*) Most of the time, they are in urgent need of funds to meet their consumption demands, for example, to meet expenses related to education,

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illness, funerals, weddings for which it is difficult to obtain institution finance.

(*d*) Investment in income generating activities.

- Concept of Self Help Groups (SHGs) is the most exciting discovery in the context of microfinance. The Indian microfinance scene is dominated by SHGs and their linkage with banks. This has helped in empowerment of women and eradication of poverty among people with low income.
- Micro finance provides a greater menu of options whereby the small loan can be garnered not just from the external sources but also through self-mobilization, by way of saving and sale of assets.
- The biggest flexibility in the case of micro finance is the lack of any physical collateral, even in case of loan from the bank.

Key features of Micro Finance Institutions: *Please refer to answer of Question 22.*

NIDHI COMPANY

24. What do you understand by Nidhi Company? State the regulatory framework and characteristics of such companies?

Ans.: Nidhi Company: A Nidhi Company, is one that belongs to the non-banking finance sector and is recognized under section 406 of the Companies Act, 2013.

Core business: Core business of Nidhi Company is borrowing and lending money between its members.

Other Names: Nidhi companies are also known as **Permanent Fund, Benefit Funds, Mutual Benefit Funds & Mutual Benefit Company.**

Regulatory Framework: They are regulated by the Ministry of Corporate Affairs, Government of India and are registered under the Companies Act, 2013.

Characteristics: Characteristics of a Nidhi Company may be summarized below:

- It is allowed to transact business only with its members and with nobody else. Hence, in case a person wishes to place deposit with a Nidhi or borrow money from a Nidhi, he must first become a member (shareholder) of the Nidhi by subscribing to 10 equity shares or shares equivalent to ₹ 100.
- After commencement of the Companies Act, 2013, no Nidhi shall issue preference shares.
- They are allowed to open branches subject to compliance with Rule 10 of the Nidhi Rules, 2014, but do not operate on a pan India basis.
- They are incorporated as public companies with a minimum paid-up equity share capital of ₹ **10,00,000.**
- Loans may be provided only to its members and should be fully secured.
- A director of a Nidhi shall be a member and shall hold office for a term up to 10 consecutive years on the Board of a Nidhi.
- Nidhi can declare dividend not exceeding 25% and any higher amount shall be specifically approved by the Regional Director.

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- Nidhi shall adhere to the prudential norms for revenue recognition and classification of assets in respect of mortgage loans or jewel loans as provided in Rule 20 of the Nidhi Rules, 2014.

25. Explain the process and conditions of incorporation of Nidhi Companies.

Ans.:

(*a*) **Incorporation:** For incorporation, the normal procedure for incorporating a public company is required to be complied with, such as obtaining availability of name, filing of MOA and AOA and other related documents.

(*b*) **Object of Nidhi Company:** Care must be taken to see that the Objects Clause of the Memorandum should restrict itself to the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to its members only for their mutual benefit and for other permitted purposes. The name of the company should end with the words "Nidhi Limited".

(*c*) **Conditions after incorporation:** After incorporation, according to Rule 5 of the Nidhi Rules, 2014, every Nidhi shall within one year from the date of incorporation ensure that it has –

- Not less than **200 members**;
- Net Owned Funds of **₹ 10 lakh or more**;
- Unencumbered term deposits of not less than **10% of the outstanding deposits**; and
- Ratio of Net Owned Funds to deposits of not more than **1:20**.

(*d*) **Net Owned Funds:** As per Rule 9, every Nidhi shall maintain Net Owned Funds of not less than **₹ 25 lakh** (*excluding the proceeds of any preference share capital*) or such higher amount as the Central Government may specify from time to time.

26. Ragavi and her six more relatives and friends want to incorporate a Nidhi Company. They seek your advice on the following issues with respect to the formation of company:

(*i*) Whether Nidhi Company can be formed as a private company? Is there any specific law for the Nidhi Companies?

(*ii*) Whether the approval of Reserve Bank of India (RBI) is required?

(*iii*) Whether Nidhi is allowed to raise funds through issue of equity shares and preference shares.

(*iv*) Whether Nidhi is allowed to carry on business other than the business of borrowing or lending in its own name?

As a practicing Company Secretary, advise with reference to the provisions of the Companies Act, 2013. [June 2019 (4 Marks)]

Ans.:

(*i*) As per Rule 4 of the Nidhi Rules, 2014, a Nidhi to be incorporated under the Act shall be a public company and hence Nidhi Company cannot be formed as private company.

Nidhi Companies are regulated by the Companies Act, 2013 read with Nidhi Rules, 2014.

Even though Nidhi Companies are regulated by the provisions of the Companies Act, 2013, they are exempted from certain provisions of the Act, as applicable to other companies, due to limiting their operations within members.

(*ii*) No RBI approval is necessary to register the company, as RBI has specifically exempted this category of NBFC in India to comply its core provisions such as registration with RBI.

(*iii*) As per Rule 6 of the Nidhi Rules, 2014, Nidhi shall not issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever.

Thus, Nidhi Company can issue equity shares but cannot issue preference shares.

(*iv*) As per Rule 6 of the Nidhi Rules, 2014, Nidhi shall not carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate.

27. Nidhi Companies can provide loans to its members subject to certain limits as per the 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.

[June 2021 (5 Marks)]

Ans.: According to Rule 15 of Nidhis Rules, 2014, the Nidhi Company shall provide loans only to its members.

Limits on loan to members: The loans given by a Nidhi to a member shall be subject to the following limits:

(*a*) ₹ 2 lakh, where the total amount of deposits from its members is less than ₹ 2 Crore.

(*b*) ₹ 7.50 lakh, where the total amount of deposits from its members is more than ₹ 2 Crore but less than ₹ 20 Crore.

(*c*) ₹ 12 lakh, where the total amount of deposits from its members is more than ₹ 20 Crore but less than ₹ 50 Crore.

(*d*) ₹ 15 lakh, where the total amount of deposits from its members is more than ₹ 50 Crore.

Where a Nidhi has not made profits continuously in the 3 preceding financial years, it shall not make any fresh loans exceeding 50% of the maximum amounts of loans specified in clauses (*a*), (*b*), (*c*) or (*d*).

Further loans to member: 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.

Thus, Rakesh cannot be granted 2nd loan as he has defaulted in repayment of 1st loan.

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28. Mahesh Nidhi Ltd. was incorporated on 30th September, 2020. The Board of Directors seeks your advice about the compliances need to be done in respect of each of the following:

(i) Compliances which are required to be done up to the end of first financial year of the Company.

(ii) Opening of branches of Mahesh Nidhi Ltd. [June 2021 (4 Marks)]

Ans.:

(i) Compliances which are required to be done up to the end of first financial year: 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 200 members.
- Net Owned Funds of ₹ 10 lakh 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 up to end of the first financial year of the Company.

(ii) Opening of branches by Nidhi: 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 3 financial years.
- A Nidhi may open up to 3 branches within the district.
- If a Nidhi proposes to open more than 3 branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director. An intimation is to be given to the ROC about opening of every branch within 30 days of such opening.
- Nidhi shall not open branches or collection centres or offices or deposit centres outside the State where its registered office is situated.
- Nidhi shall not open branches or collection centres or offices or deposit centres unless financial statement and annual return (up to date) are filed with the ROC.

29. Ramesh wishes to form a Nidhi Company with a minimum paid-up equity share capital of ₹ 12 lakh. Ramesh is seeking your guidance regarding the general limitations and prohibitions put in place for Nidhi Companies. [Dec. 2022 (5 Marks)]

Ans.: As per Rule 4 of the Nidhi Rules, 2014, a Nidhi shall be a public company and shall have a minimum paid-up equity share capital of ₹ 10 lakh.

Thus, Ramesh can incorporate Nidhi Company with capital of ₹ 12 lakh if he fulfils other requirements as to incorporation of Nidhi Company.

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General limitations and prohibitions:

(*a*) Nidhi cannot carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate.

(*b*) Nidhi cannot issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever.

(*c*) Nidhi cannot open any current account with its members.

(*d*) Nidhi cannot acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management.

(*e*) Nidhi cannot carry on any business other than the business of borrowing or lending in its own name. However, Nidhi which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding 20% of the gross income of the Nidhi at any point of time during a financial year.

(*f*) Nidhi cannot accept deposits from or lend to any person, *other than its members*.

(*g*) Nidhi cannot pledge any of the assets lodged by its members as security.

(*h*) Nidhi cannot take deposits from or lend money to any body corporate.

(*i*) Nidhi cannot enter into any partnership arrangement in its borrowing or lending activities.

(*j*) Nidhi cannot issue or cause to be issued any advertisement in any form for soliciting deposit. However, private circulation of the details of Fixed Deposit Schemes among the members of the Nidhi carrying the words *"for private circulation to members only"* shall not be considered to be an advertisement for soliciting deposits.

(*k*) Nidhi cannot pay any brokerage or incentive for mobilizing deposits from members or for deployment of funds or for granting loans.

(*l*) Nidhi cannot raise loans from banks or financial institutions or any other source for the purpose of advancing loans to members of Nidhi.

PAYMENT BANKS

30. How Payments Banks are different from regular Banks?
Or
Payment Bank is a new model of banks conceptualized by the Reserve Bank of India. Elucidate. [Dec. 2018 (4 Marks)]

Ans.:

(*a*) **New model of banks:** With the advent of mobile technology and vast strides made by the country in the field of information technology, Payment Banks has emerged as a new model of banks conceptualized by the RBI.

(*b*) **Meaning:** A payments bank is like any other bank, but operating on a smaller scale without involving any credit risk.

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In simple words, it can carry out most banking operations but can't advance loans or issue credit cards. Thus, a payments bank aims to further financial inclusion, especially through savings accounts and payments services.

(*c*) **Regulations:** Payment Banks are regulated by the RBI. It released Guidelines for Licensing of Payment Banks on November 27, 2014 and Operating Guidelines on October 6, 2016.

(*d*) **Registration & Licensing:** The payments bank will be registered as a Public Limited Company under the Companies Act, 2013, and licensed **under section 22** of the **Banking Regulation Act, 1949**.

(*e*) **Loan & Credit Card:** Payments bank is *not allowed* to give any form of loan or issue a credit card, which is also a form of unsecured personal loan.

(*f*) **Restrictions on saving accounts:** Even in case of savings accounts, a payments bank has certain restrictions. Customers can open a savings account with deposits of only up to ₹ **1 lakh**, which is also the maximum balance allowed.

(*g*) **Deposits:** As per RBI guidelines, payments banks can't accept fixed or recurring deposits.

(*h*) **Interest rate:** Payments banks currently offer interest rates similar to that being offered by regular banks.

(*i*) **Cheque book facility:** Savings accounts customers also do not have the cheque book facility at present. Current account holders will have this facility, though.

(*j*) **Mobile Banking App:** These bank accounts can be opened instantly through their respective mobile apps just by providing details like Aadhaar number with KYC verification.

Payments Bank account holders can also use the mobile banking app for checking balance, statement, bill payments and for online transfers.

31. Briefly discuss registration and regulatory framework of Payment Banks. Can such banks get the status of scheduled bank?

Ans.: Registration & Licensing: The payments bank will be registered as a Public Limited Company under the Companies Act, 2013, and licensed **under section 22** of the **Banking Regulation Act, 1949**, with specific licensing conditions restricting its activities mainly to acceptance of demand deposits and provision of payments and remittance services.

Regulatory Framework: It will be governed by the provisions of –

- Banking Regulation Act, 1949
- Reserve Bank of India Act, 1934
- Foreign Exchange Management Act, 1999
- Payment & Settlement Systems Act, 2007
- Deposit Insurance & Credit Guarantee Corporation Act, 1961
- Other relevant Statutes and Directives, Prudential Regulations and other Guidelines/Instructions issued by RBI and other regulators from time to time.

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Scheduled Bank Status: The payments bank will be given scheduled bank status once it commences operations and if it found suitable as per Section 42(6)(*a*) of the RBI Act, 1934.

32. Easy Finance Ltd. is willing to enter into banking business via "Payment Bank". The Board of directors of the Company seeks your advice with respect to the required criteria to be fulfilled by the company with respect to the following:

(*i*) Application for licence

(*ii*) Minimum capital requirement

(*iii*) Voting rights of shareholders

(*iv*) Services that can be undertaken by the bank [Dec. 2018 (4 Marks)]

Ans.: Keeping in view the guideline issued by the RBI, answer to given case is as follows:

(*i*) **Application for licence:** An application has to be filed with RBI in **Form III** under section 22 of the Banking Regulation Act, 1949 for a licence to commence banking business by a company incorporated in India and desiring to commence Payment Bank business.

(*ii*) **Minimum capital requirement:** The minimum capital requirement is ₹ **100 Crore.** For the first **5 years**, the stake of the promoter should remain at least **40%.**

(*iii*) **Voting rights of shareholders:** 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 RBI. Any acquisition of more than 5% will require approval of the RBI.

(*iv*) **Services that can be undertaken by the bank:**

- Payment Banks can accept a restricted deposit, which is currently limited to ₹ 1 lakh per customer and may be increased further.
- They can pay interest on these deposits just like savings bank account.
- Both current account and savings accounts can be operated by such banks.
- Payments banks can issue services like ATM cards, debit cards, net-banking, third party transfers and mobile-banking and offer remittance services.
- These banks cannot grant loans or issue credit cards.

33. 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. [Dec. 2021 (3 Marks)]

Ans.: 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 require compliance by an applicant company are summarized below:

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(*a*) **Type of company:** The banks will be registered as public limited company under the Companies Act, 2013.

(*b*) **Use of words 'payments bank':** The bank must use the term 'Payments Bank' in its name to differentiate it from other types of bank.

(*c*) **License:** The banks will be licensed as payments banks under section 22 of the Banking Regulation Act, 1949.

(*d*) **Capital:** The minimum capital requirement is ₹ 100 Crore. For the first 5 years, the stake of the promoter should remain at least 40%.

(*e*) **Foreign shareholding:** Foreign shareholding will be allowed in these banks as per the rules for FDI in private banks in India.

(*f*) **Voting rights:** 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.

(*g*) **Board of directors:** The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.

(*h*) **Deposits:** Initially, the deposits will be capped at ₹ 1,00,000 per customer, but it may be raised by the RBI based on the performance of the bank.

(*i*) **Lending activities:** The bank cannot undertake lending activities.

(*j*) **Branches:** 25% of its branches must be in the unbanked rural area.

MUDRA BANK

34. Define the term 'MUDRA Banks'. [June 2022 (4 Marks)]

Or

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. [Dec. 2021 (4 Marks)]

Ans.: Micro Units Development & Refinance Agency Bank (or MUDRA Bank) is a public sector financial institution in India. It provides loans at low rates to Micro Finance Institutions and Non-Banking Financial Institutions which then provide credit to MSMEs. It was launched by Prime Minister Narendra Modiji on 8 April, 2015.

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

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

Shishu: Allowed loans up to ₹ 50,000 (US $ 780)

Kishore: Allowed loans up to ₹ 5,00,000 (US $ 7,800)

Tarun: Allowed loans up to ₹ 10,00,000 (US $ 16,000)

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Those eligible to borrow from MUDRA bank are:

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

The basic criteria of age should be 18 years old. Loan under the scheme of the Pradhan Mantri Mudra Bank Loan will be available if and only if it is for commercial and business purposes and not for personal purposes.

At the most, borrower can buy vehicle from Mudra loan, given that it is used for commercial purposes. Lastly, this loan is for new business and is only applicable for small business owners.

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

35. Tarun who has just completed MBA Degree wants to start business of manufacturing kitchen appliances. Brief him the procedure to avail loan under Pradhan Mantri Mudra Yojana.

Ans.: Once the beneficiary identifies an idea and comes up with a business plan, he is supposed to select the business category under which he wishes to avail the loan (Shishu, Kishor or Tarun).

The beneficiary can contact the nearest Public/Private sector bank where he can apply for business under PMMY. The list of institutions partnering in the MUDRA initiative is available on the MUDRA portal.

An application form under this scheme will be available with each of the above listed institutions. 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 purchases
- 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, Axis, HDFC etc.). It is a government financing scheme to provide business loan to new small businesses in India. To get business loan under PPMY the candidate has to contact the nearest Public/Private sector bank. 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/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.

36. What do you understand by MUDRA Card?

Ans.: MUDRA Card is a debit card issued against the MUDRA loan account, for working capital portion of the loan. The borrower can make use of MUDRA Card in multiple drawals and credits, so as to manage the working capital limit in cost-efficient manner and keep the interest burden minimum. MUDRA Card also helps in digitalization of MUDRA transactions and creating credit history for the borrower.

MUDRA Card can be operated across the country for withdrawal of cash from any ATM/Micro ATM and also make payment through any 'Point of Sale' machines.

CHIT FUND

37. Discuss briefly regulatory framework for chit funds in India.

Ans.: Chit funds companies in India are governed by various State or Central laws. Organized chit fund schemes are required to be registered with the Registrar of Firms, Societies, and Chits. The chit funds are governed by following laws:

1. Chit Funds Act, 1982 (Except the State of Jammu and Kashmir)
2. Tamil Nadu Chit Funds Act, 1961
3. The Chit Funds (Karnataka) Rules, 1983
4. Delhi Chit Funds Rules, 2007
5. Maharashtra Chit Fund Act, 1975
6. West Bengal Protection of Interest of Depositors in Financial Establishments Bill, 2013
7. Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

The RBI is the regulator of banks and NBFCs, but it does not control the chit fund business. Despite the fact that chit funds are accepting deposits, the term 'deposit' as defined by the RBI Act, 1934 does not comprise the subscription to chits. However, the RBI can always guide State Governments on the regulatory aspects of the creation of rules or exemption of certain chit funds.

Although, SEBI as the regulator and controller of the securities market regulates and manages collective investment schemes. But, the SEBI Act, 1992 specifically precludes chit funds from their definition of collective investment schemes

38. What are the restrictions imposed by Reserve Bank of India on chit fund business?

Ans.: Various restrictions imposed by RBI on Chit fund business are given below:

- Chit fund business can be conducted only by a registered company.
- Running of Chit business by family and partnership firms are restricted.
- Chit companies must register with the Registrar of Chit Company in every state, furnishing full particulars about their chit company.
- The maximum discount that could be taken in a bid was restricted to 30% of the total chit amount. However, in 2001, the same has been enhanced to 40% (*in the case of a chit for ₹ 1,00,000, not more than ₹ 40,000 can be the bid amount*).
- Details of each and every chit must be furnished to RBI along with the personal particulars of the subscribers.
- It is mandatory to keep one month's chit amount of all the subscribers/members with the RBI till the end of a particular chit.

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9 CHAPTER

BUSINESS COLLABORATIONS

BUSINESS COLLABORATIONS

1. Write a short note on: Types of Business Collaboration

Ans.: When two or more entities work together through idea sharing and thinking to accomplish a common goal is known as Collaboration. Collaboration provides solutions, give a strong sense of purpose and also reinforce the objectives of coming together.

Types of Business Collaboration

(1) **Horizontal Collaboration:** When the businesses in the same set of functional area agree to collaborate in a way to improve their competencies is known as Horizontal Collaboration.

(2) **Vertical Collaboration:** Vertical Collaboration is a collaboration wherein the business collaborates with companies in its supply chain either upward or downwards (its suppliers or distributors).

(3) **Intersectional Collaboration:** When the businesses from different functional areas agree to share their special knowledge for the advancement of all partners in collaboration is known as Intersectional Collaboration.

(4) **Joint Venture:** Two or more businesses form a new company. The new company is its own legal entity, and its profits are split according to terms spelled out in a formal contract is a Joint Venture.

(5) **Equity:** A company acquires a minor equity stake in another business in exchange for a monetary investment. Such exchanges can accompany other types of collaboration and, to a certain extent, agreed-upon access to decision making.

2. Discuss briefly various type of foreign collaboration.

Ans.: Foreign collaboration is an alliance of domestic entity and foreign entity. Foreign collaboration is an alliance formed for mutual benefit of collaborating parties.

Types of Foreign Collaborations:

(1) **Financial collaboration:** In such case, inflow of foreign investment takes place in the domestic country. In this method, the foreign company provides finance by:

(*a*) **Purchasing shares:** Foreign company purchases shares of the domestic company and in return gets the dividend for these shares.

(*b*) **Long-term loans:** Foreign company gives long-term loans to the domestic company and in return gets interest from these loans.

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(c) **Credit facility:** Foreign company gives credit facility to the domestic company. The native company uses this credit facility to purchase raw-materials, plant and machinery.

Thus, in financial collaboration, there is an inflow of finance from developed countries to developing countries.

(2) **Technical collaboration:** In such case, the inflow of foreign technology takes place in the domestic country. In technical collaboration, the foreign company provides technological know-how, professional services and expertise, installs automated machineries, etc., in the domestic country. Here, an inflow of modern technology takes place from the developed country to the developing country. Technical collaboration helps to remove an existing technological gap. Therefore, the governments of developing countries encourage such collaborations.

(3) **Marketing collaboration:** In such case, the inflow of foreign goods and services take place in the domestic country. In marketing collaboration, foreign company agrees to sell goods produced by the domestic company. The foreign company sells these goods in its own country or in the international market. It uses its distribution network to sell the goods. Marketing collaboration is very beneficial for increasing its exports of goods and services.

(4) **Management consultancy collaboration:** In such case, the inflow of foreign management consultancy takes place in the domestic country. In management consultancy collaboration, foreign company provides management skills to the domestic company and teaches it everything about management. In other words, it gives advice and solves management problems of the domestic company. It teaches management skills for the following:

- Production management
- Marketing management
- Personnel management
- Financial management

The foreign company also helps the domestic company to modernize and diversify its business process. So, in management consultancy collaboration, the foreign company increases the management efficiency of the domestic company. This type of collaboration is found in both private and public sector

JOINT VENTURES

3. Discuss the various advantages of forming joint venture.

Ans.: Joint venture is an entity formed between two or more parties to undertake economic activity together. The parties agree to create a new entity to share in the revenues, expenses, and control of the enterprise. Joint Ventures are generally created for a single activity or project, and may have a limited time span. The use of a separate entity allows the parties to limit the liabilities associated with the relationship.

Various advantages of forming Joint Venture are as follows:

(1) **Risk Sharing:** Risk sharing is one of the biggest advantages of forming a Joint Venture, particularly, in those industries where the cost of product development and likelihood of failure of any particular product is very high.

(2) **Economies of Scale:** Another advantage of forming Joint Venture is for the industries which have high fixed costs, a Joint Venture with a larger company can provide the economies of scale necessary to compete locally or globally and can be an effective way by which two companies can pool resources and achieve critical mass.

(3) **Market Access:** For companies that lack a basic understanding of customers and the relationship/infrastructure to distribute their products to customers, forming a Joint Venture with the right partner can provide instant access to established, efficient and effective distribution channels and receptive customer bases. This is important to a company because creating new distribution channels and identifying new customer bases can be extremely difficult, time consuming and expensive activities.

(4) **Exploring the Global Market:** Formation of Joint Venture can be advantageous to those companies, which are foreseeing an attractive business opportunity in a foreign market. Partnering with foreign company makes easy to capture foreign market.

(5) **Easy acquisition of other entity or business:** When a company wants to acquire another, but cannot do so due to cost, size, or geographical restrictions or legal barriers, teaming up with a Joint Venture Partner can be an attractive option. The JV is substantially less costly and less risky than complete acquisitions, and is sometimes used as a first step to a complete acquisition with the Joint Venture Partner.

(6) **Cost Efficiency:** For a small-scale entity, sometimes it is difficult to set up the infrastructure and the machinery required product development. In such cases joint venture is the perfect solution.

(7) **Flexible Nature:** The joint venture enterprises provide flexibility; each participant has the freedom to continue with their individual businesses. The joint venture participants can only interfere within the participated project and in accordance with agreement made by them only.

4. Global Infra Ltd., an Indian Entity, is in the process of drafting a joint venture agreement for forming Joint Venture (JV) with a foreign company based out of Singapore to expand its business outside India. Advise on the key issues which parties to the agreement should consider while drafting the JV Agreement. [Dec. 2018 (4 Marks)]

Ans.: In India, there is no legally prescribed format of a Joint Venture Agreement. However, in actual practice, such Joint Venture Agreement contains the following components (the list is illustrative and not exhaustive):

- The business of the new Company/LLP.
- Manner and extent to which resources (financial, manpower, technology *etc.*) will be brought in.
- Provisions relating to allotment and transfer of shares.

- Constitution of the Board of directors/designated partners.
- Manner in which decision making will take place (majority vote or consensus).
- Decision regarding the Chairman and Managing Director of the entity, their rights, duties and responsibilities.
- Persons responsible for managing finances, marketing, production etc.
- Dividend distribution policy.
- Term of office of the nominated directors, the manner of their appointment and changes among them.
- Valuation of the company at the time of separation.
- Dispute resolution mechanism.

Therefore, Global Infra Ltd. has to keep in mind the above points while drafting the Joint Venture Agreement.

5. State the different types of strategies that can be adopted to make joint venture successful.

Or

'Joint Ventures can be extremely valuable and chances of their failure can be reduced to a great extent, if strategically formed'. Comment on important strategies of joint venture. [Dec. 2019 (4 Marks)]

Ans.: Joint ventures can be very effective for growth and success of a business. If formed strategically joint ventures can be extremely valuable and chances of their failure can be reduced to a greater extent.

Following are the strategies for forming a successful joint venture:

(*a*) **Identification of prospective Joint Venture Partner:** The prospective partner should be strong in terms of business, technology and resources. Each partner must have specialization in different area. For example, one entity's strength is economies of scale and another entity's strength is strong marketing. Both the entities if formed into JV can have a larger market for their products.

(*b*) **Reliability of Partner:** Joint Venture Partner should never be weak or untrustworthy partner, as it would lead to failure of the joint venture. On the other hand, joint venture with strong and trustworthy partner would generate enormous benefits for both the partners and joint venture entity.

(*c*) **Development of strong joint venture relationship:** Partners must strive to develop joint venture relationships that are easy to maintain, financially profitable, intellectually rewarding, and long lasting. After a necessary period of negotiation and implementation, the joint venture relationship should grow well and quickly and painlessly.

(*d*) **Equal Contribution:** Joint venture partners must make sure that all the partners have equal contribution in the joint venture entity in terms of skills, intellectual resources, marketing resources, capital, and so on. Unbalanced or unequal contributions are never healthy for the success of a joint venture entity.

(*e*) **Written Agreement:** The agreement between two or more parties always be written and must clearly define all the terms, rights and responsibilities

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of each partner. The language of the agreement must be simple and there should be no ambiguity.

(*f*) **Limiting the scope of joint venture:** It is essential that limits and scope of the venture should be defined in the beginning itself. This helps to increase the trust amongst the partners. The scope of joint venture should be increased with the mutual consent of all the partners.

(*g*) **Well defined business model:** The firms in a joint venture must clearly define the nature of the new venture. A well-defined business model provides a base for the legal and financial frameworks.

(*h*) **Flexibility:** The partners in JV should try to be flexible and favour partners who demonstrate the same level of flexibility.

(*i*) **Establishment of exit routes:** Joint Venture Partners must establish clear protocols in the beginning itself for amending or unwinding the relation if it fails to meet the expectations or for any dispute that may arise subsequently.

6. 'Every Equity based joint venture gives birth to a new entity'. Discuss in brief the different types of entities which are permitted by Government of India to form a joint venture entity. [June 2019 (4 Marks)]

Ans.: Joint Ventures can be formed *via* two modes/methods:

(1) Equity Joint Venture

(2) Contractual Joint Venture

Every equity based joint venture gives birth to a new entity.

Different types of entities that can be formed are summed up below:

(1) **Company:** A limited liability company is the most preferred structure for joint venture entities in India. Government also encourages investment being in the form of equity capital of a company incorporated in India. Companies in India are mainly of two types — private limited and public limited.

(2) **Limited Liability Partnership (LLP):** LLP Firm structure is regulated in India by the Limited Liability Partnership Act, 2008. Foreign investment in LLP Firms was not permitted before November 2015. Government of India has now allowed foreign investments in LLP firms subject to certain restrictions. LLP Firms are partnership firms with limited liability of partners. There is no requirement of minimum capital contribution to incorporate an LLP Firm.

(3) **Venture Capital Fund:** A duly registered Foreign Venture Capital Investor is allowed to contribute up to 100% in Indian Venture Capital Undertakings/ Venture Capital Funds/other companies.

(4) **Trusts:** A foreign company is not allowed to use Trust as a form of a joint venture entity in India. Investment Vehicle — SEBI has introduced regulations for some funds like Real Estate Investments Trusts, Infrastructure Investment Funds, Alternative Investment Funds. Such funds are now permitted to receive foreign investment from a person resident outside India.

(5) **Other Entities:** Foreign companies are not allowed to use any structures other than those mentioned above for the purpose of equity based Joint venture entities.

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To sum up, it can be concluded that the most acceptable and convenient forms of equity based joint venture in India are a limited liability company and LLP.

7. 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. [Dec. 2020 (4 Marks)]

Or

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. [June 2021 (4 Marks)]

Or

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. [June 2022 (5 Marks)]

Ans.: 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 exercise 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.

When Contractual Joint Venture is useful:

- 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.

Relationship between parties: For the purposes of contractual Joint Venture, the relationship between parties is set forth in the contract or agreement concluded between them.

Operations: The way in which 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.

Agreements: The licensing agreement, know-how agreement, technical services or technical assistance agreement franchise agreement and agreement covering all other

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commercial matters might even form annexes to the main joint venture agreement. They can be signed once Joint Venture Company is established.

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

SPECIAL PURPOSE VEHICEE (SPV)

8. Explain with reasons, why the concept of Special Purpose Vehicle (SPV) has gained prominence in India in recent times. Quote example.

Or

A Special Purpose Vehicle (SPV) or Special Purpose Entities (SPE) are generally formed for a special purpose. Elucidate. [June 2021 (4 Marks)]

Ans.: A Special Purpose Vehicle (SPV)/Special Purpose Entities (SPE) are generally formed for a special purpose. Scope of these kind of companies or entities are limited only to those activities which are required to be performed to attain specific purpose. These companies/entities close their operations once the purpose is attained. The operations of these entities are limited to the acquisition and financing of specific assets. SPVs are generally a subsidiary company whose obligations are secured even if the parent company goes bankrupt.

A SPV/SPE may be formed through limited partnerships, trusts, corporations, limited liability companies or other entities. SPV may be designed for independent ownership, management and funding of a company or as protection of a project from operational or insolvency issues. SPVs help companies to securitize assets, create joint ventures, isolate corporate assets or perform other financial transactions.

Thus, SPV is an entity which has distinct identity from its promoters or sponsors or constituents or shareholders.

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

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

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

Government also forms SPVs for special projects. To give an example, to implementation the Mission of Smart Cities (a project of the Ministry of Housing & Urban Affairs, Government of India), Special Purpose Vehicle (SPV) is created. The SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects. Each smart city will have a SPV which will be headed by a full time CEO and have nominees of Central Government, State Government and ULB on its Board. The SPV will be a limited company incorporated under the Companies Act, 2013.

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9. Explain the various benefits of Special Purpose Vehicle (SPV).

Or

Explain any five benefits of forming a Special Purpose Vehicle (SPV). [June 2023 (4 Marks)]

Ans.: A Special Purpose Vehicle (SPV)/Special Purpose Entities (SPE) are generally formed for a special purpose. Scope of these kind of companies or entities are limited only to those activities which are required to be performed to attain specific purpose.

Various benefits of Special Purpose Vehicles are given below:

(*a*) **Ownership of Assets:** An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.

(*b*) **Minimum Statutory Requirement:** Depending on the choice of jurisdiction, it is relatively easy to set-up SPV.

(*c*) **Clarity of documentation:** It is easy to limit certain activities or to prohibit unauthorized transactions within the SPV documentation.

(*d*) **Tax Benefits:** SPVs are often used to make a transaction tax efficient by choosing the most favourable tax residence for the vehicle. SPVs are method of financial engineering schemes which have as their main goal, the avoidance of tax.

(*e*) **Legal Protection:** By structuring the SPV appropriately, the sponsor may limit legal liability in the event the underlying project fails.

(*f*) **Accounting Reasons:** Debts raised through SPV are not reflected in the balance sheet of the sponsor. Losses incurred by SPV are not shown in the balance sheet of the sponsor, so it helps to maintain the healthy picture of the sponsor in the eyes of its stakeholders.

(*g*) **Separation of risk & capital:** The key advantage is that it helps in separating the risk and capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation.

(*h*) **Securitization of assets:** 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.

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10 CHAPTER
SETTING-UP OF BRANCH OFFICE/ LIAISON OFFICE/WHOLLY OWNED SUBSIDIARY BY FOREIGN COMPANY

PROVISIONS OF THE COMPANIES ACT, 2013 RELATING TO FOREIGN COMPANY

1. To consider a body corporate as a foreign company, a place of business in India is to be established. State the activities that do not constitute carrying of business in India. [June 2015 (4 Marks)]

Ans.: Foreign Company [Section 2(42)]: 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.

In simple words, foreign company means a company which is incorporated outside India under the law of that other country and has a place of business in India.

Following activities are held as not constituting "carrying on of business":

- Carrying small transactions.
- Conducting meetings of shareholders or even directors.
- Operating bank accounts.
- Transferring of shares or other securities.
- Operating through independent contractors.
- Procuring orders.
- Creating or financing of debts, charges, etc. on property.
- Securing or collecting debts or enforcing claims to property of any kind.

2. Referring to the provisions of the Companies Act, 2013, state as to when shall a company incorporated outside India be considered as a 'foreign company' within the meaning of the Companies Act, 2013. Also examining the provisions of the Act, state whether in the following cases, the company shall be considered as a 'foreign company':

(*i*) A company incorporated outside India has a representative in India, who on behalf of the company merely receives orders from the customers.

(*ii*) Company incorporated outside India holds its Board meetings and general meetings in India. [Dec. 2015 (4 Marks)]

Ans.: Foreign Company [Section 2(42)]: Foreign company means any company or body corporate incorporated outside India which –

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(*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.

In simple words, foreign company means a company which is incorporated outside India under the law of that other country and has a place of business in India.

A foreign company has to comply the provisions of Sections 379 to 393 of the Companies Act, 2013.

If a representative of a foreign company in India merely receives the orders from customers it cannot be said that it has 'place of business' in India. Hence, **Sections 379 to 393** of the Companies Act, 2013 relating to foreign companies are not applicable and need not be complied.

Similarly, conducting board meeting and general meeting in India by a foreign company has held to be not "carrying on of business".

3. Actavis Ireland Ltd. a pharmacy firm incorporated in Ireland:

(*i*) has a share transfer office in Kanpur;

(*ii*) directors of the company frequently stayed in a hotel in Noida and Mumbai for looking after matters of business, the company does not have any physical office or property in India.

As a practicing Company Secretary, advice under the provisions of the Companies Act, 2013, whether the company will be treated as having place of business in India? [June 2019 (5 Marks)]

Ans.: Foreign Company [Section 2(42)]: 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.

In simple words, foreign company means a company which is incorporated outside India under the law of that other country and has a place of business in India.

As per Section 386(*c*) the expression 'place of business' includes a share transfer or registration office.

In *Tovarishestvo Manufacture Liudvig Rabenek*, it was held that where representatives of a company incorporated outside the country frequently stayed in a hotel in England for looking after matter of business, it was held that the company had a place of business in England.

In a certain cases, it was held that mere holding of property cannot amount to having a place of business.

Considering above provisions, answer to given case is as follows:

(*i*) A share transfer office in Kanpur which constitutes a place of business in India and hence Actavis Ireland Ltd. is foreign company.

(*ii*) Directors of Actavis Ireland Ltd. frequently stayed in a hotel in Noida and Mumbai for looking after matter of business. Though the Company does not

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have any physical office or property in India, it would be treated as having a place of business in India and hence it is foreign company.

4. 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. [June 2021 (4 Marks)], [Dec. 2022 (4 Marks)]

Ans.: Foreign Company [Section 2(42)]: 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.

In simple words, foreign company means a company which is incorporated outside India under the law of that other country and has a place of business in India.

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.

Hence, Melta LLC is treated as Foreign Company, even though it has no place of business in India, but it is conducting its online business through electronic mode in India.

5. MN 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. [Dec. 2021 (4 Marks)]

Ans.: Documents to be delivered to ROC by foreign companies [Section 380]: Every foreign company which establishes a place of business in India must within 30 days of the establishment of such place of business, file with the ROC for registration following documents/information:

- A certified copy of the charter, MOA and AOA of the company. (*If it is not in the English language, a certified translation in the English language has to be filed.*)
- The full address of the registered or principal office of the company.
- A list of the directors and secretary.

- The name and address of persons resident in India who are authorized to accept any notices or other documents required to be served on the company.
- The full address of principal place of business in India.
- Particulars of opening and closing of a place of business in India on earlier occasions.
- Declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad.
- Any other prescribed information.

PROVISIONS OF THE FEMA RELATING TO ESTABLISHMENT OF BRANCH OFFICE/ LIAISON OFFICE/PROJECT OFFICE IN INDIA

6. A company incorporated in USA desires to establish its manufacturing unit in special economic zone in India. Advice with reference to relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder. [Dec. 2012 (1 Mark)]

Ans.: As per Regulation 3 of the FEM (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, no approval shall be necessary from RBI for a company to establish a branch or unit in SEZ to undertake manufacturing and service activities if conditions mentioned in that regulation are complied with.

Exception: A company resident outside India shall not require any approval to establish a branch office in the SEZs to undertake manufacturing and service activities in following cases:

(*i*) Such branch offices are functioning in those sectors where 100% FDI is permitted.

(*ii*) Such branch offices comply with provisions of Chapter XXII of the Companies Act, 2013.

(*iii*) Such branch offices function on a stand-alone basis.

Thus, a company incorporated in USA can open its branch in a SEZ in India subject to compliance of conditions stated above.

7. A Branch Office can be established by a body incorporated outside India, including a firm or association of persons, involved in manufacturing or trading activities. The permission to set-up a Branch Office has to be obtained from the RBI under the FEMA, 1999 provisions. In light of the RBI Master Circular of 2016, highlight the activities which are permitted by the RBI. [Dec 2020 (5 Marks)]

Ans.: As per Regulation 4 of the FEM (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any Other Place of Business) Regulations, 2016, a person resident outside India permitted by the RBI to establish a branch or liaison office in India may undertake or carry on any activity specified in Schedule I but shall not undertake or carry on any other activity unless otherwise specifically permitted by the RBI.

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Permitted activities for a branch office in India of a person resident outside India [Schedule I]:

- Export/import of goods.
- Rendering professional or consultancy services.
- Carrying out research work in which the parent company is engaged.
- Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- Representing the parent company in India and acting as buying/selling agent in India.
- Rendering services in Information Technology and development of software in India.
- Rendering technical support to the products supplied by parent/group companies.
- Representing a foreign airline/shipping company.

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

8. A French Manufacturing Company desirous of setting-up its branch office at Pune, seeks your advice on the objects for which the company may be allowed to set up the desired branch office. Advice the company about the eligibility criteria and types of offices that can be opened on India under the Foreign Exchange Management Act, 1999 and the Rules and Regulations made thereunder.

Ans.: As per Regulation 3 of the FEM (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, person resident outside India shall take prior approval of the RBI open in India a branch office or a liaison office or a project office or any other place of business by whatever name called.

Approval for opening a branch office or a liaison office or a project office or any other place of business in India [Regulation 4]:

(1) Eligibility: A person resident outside India can establish a branch office or a liaison office in India provided it meets the following criterion:

(*a*) The applicant company must be a body corporate incorporated outside India.

(*b*) The name of the Indian branch office must be the same as the parent company. If the branch office does not have revenue from India operations, its expenses must be met by the head office.

(*c*) The parent company should have a profit making record & net worth as specified below:

- **For Branch Office:** A profit making track record during the immediately preceding 5 financial years in the home country and net worth of not less than **US$ 1,00,000** or its equivalent.

- **For Liaison Office:** A profit making track record during the immediately preceding 3 financial years in the home country and net worth of not less than **US$ 50,000** or its equivalent.

In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LOC), given the company satisfies the prescribed criteria for net worth and profit.

(2) **Permissible activities:** A person resident outside India permitted by the RBI to establish a branch or liaison office in India may undertake or carry on any activity specified in Schedule I or Schedule II, but shall not undertake or carry on any other activity unless otherwise specifically permitted by the RBI.

(3) **Application form:** A person resident outside India desiring to establish a branch office or a liaison office or a project office or any other place of business in India shall submit an application in Form FNC to an AD Category-I who may, grant approval as per the directions and/or guidelines issued by the RBI in this regard.

(4) **Additional offices:** A person resident outside India desiring to establish additional branch office or liaison office may submit to the AD Category-I a fresh FNC Form along with the justification for the need for additional offices.

(5) **Project office:** A foreign company may open project office(s) in India provided it has secured from an Indian company, a contract to execute a project in India and the project is funded directly by inward remittance from abroad.

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9. A Company registered under the USA Laws desirous of setting-up its branch office at Pune. Advice the company about the provisions for registration of branch office in India and procedure to be followed in this regard.

Ans.: Approval of RBI: Foreign company must apply for approval from the RBI under provisions of the Foreign Exchange Management Act, 1999 to open a branch office in India.

Submission of Form: Foreign entities whose principal business falls under sectors where 100% FDI is permissible under the automatic route must complete the **Form FNC** and submit it to the RBI, along with the associated documents.

For other sectors, the form must be submitted to the Ministry of Finance. In this case, the application for establishing branch office must be forwarded by the foreign entity through a designated AD Category–I bank to the RBI.

Establishment of branch office in more than one location: If the foreign entity wishes to establish a branch office in more than one location in India, it must register the branch, or seek approval from the RBI for each of the location separately. The RBI approval is also necessary for each activity the branch office intends to undertake in India.

Documents/information to be submitted for establishment branch office in India:

- FNC form duly signed by AR.
- Information about the parent company along with its certificate of incorporation attested by a Notary Public or the Indian Embassy in the country of registration.

- Incorporation documents of the branch office to be established in India.
- Proof of registered office.
- Note on location or proposed activity.
- Latest audited balance sheet of the applicant entity.
- Board resolution to open a branch office.
- KYC of the authorized signatory.
- Information about the local representatives of the parent company in the branch office.

10. IBM Inc. a company incorporated in United States of America is continuously making profit from last four years and its net worth as per latest audited balance sheet is more than US$ 60,000. Directors of the IBM Inc. wants to set-up liaison office in India. As a Practicing Company Secretary advice the directors of the IBM Inc. regarding the eligibility for setting-up liaison office in India and permitted activities that can be undertaken by such liaison office.

Ans.: Liaison Office: Liaison Office means a place of business to act as a channel of communication between the principal place of business or Head Office and entities in India *but which does not undertake* any commercial/trading/industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

Eligibility for setting-up a Liaison office:

- The applicant company must be a body corporate incorporated outside India.
- The name of the Indian branch office must be the same as the parent company. If the branch office does not have revenue from India operations, its expenses must be met by the head office.
- The net worth of the liaison office must not be less than **US$ 50,000**.
- The parent company should have a profit making record in the immediately preceding 3 financial years in the home country.

In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LOC), given the company satisfies the prescribed criteria for net worth and profit.

Permitted activities for Liaison Office:

- Representing the parent company/group companies in India.
- Promoting export/import from/to India.
- Promoting technical/financial collaborations between parent/group companies and companies in India.
- Acting as a communication channel between the parent company and Indian companies.

As per facts given in case, the IBM Inc. fulfils the eligibility criteria hence it can set-up a liaison office in India after obtaining the permission of the RBI.

11. Briefly discuss the procedure for establishment of Branch Office/Liaison Office/Project Office in India by Foreign Company.

Ans.: Following steps are followed for establishing the Branch Office/Liaison Office/ Project Office of Foreign Company:

(1) **Submission of Form FNC:** The application for establishing BO/LO/PO in India may be submitted by the non-resident entity in **Form FNC** to a designated AD Category–I bank along with the prescribed documents and the LOC, wherever applicable.

The AD Category-I bank shall after exercising due diligence in respect of the applicant's background, and satisfying itself as regards adherence to the eligibility criteria and compliance with KYC norms grant approval for establishing BO/LO/PO in India.

(2) **Allotment of Unique Identification Number (UIN):** However, before issuing the approval letter to the applicant, the AD Category-I bank shall forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the RBI at New Delhi for allotment of Unique Identification Number to each BO/LO.

(3) **Issue of Approval letter:** After receipt of the UIN, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/ LO in India. This is in order to enable the RBI to keep, maintain and upload up-to-date list of all foreign entities which have been granted permission for establishing BO/LO in India, on its website.

(4) **Intimation to Designated AD Category–I bank:** An applicant that has received permission for setting up of BO/LO/PO shall inform the designated AD Category–I bank as to the date on which the BO/LO/PO has been set-up. The Category–I bank in turn shall inform RBI accordingly.

(5) **Extension for setting-up office:** The approval granted by the AD Category–I bank should include a proviso to the effect that in case the BO/LO/PO for which approval has been granted is not opened within 6 months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of 6 months for setting up the office. Any further extension of time shall require the prior approval of RBI in this regard.

(6) **BO/LO by foreign banks and insurance companies:** All applications for establishing a BO/LO in India by foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation (DBR), RBI, Central Office and the Insurance Regulatory and Development Authority (IRDA), respectively. No UIN for such representative offices is required from the Foreign Exchange Department of RBI.

12. A foreign entity which has established Liaison Office/Branch Office/Project Office in India wants open bank account. In this connection you are required to answer the following:

(*i*) How such bank account can be opened?

(*ii*) Whether it is possible to open more than one bank account in India?

(*iii*) What are the permitted debits and credits to such bank account?

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Ans.: (A) Opening of bank account by Liaison Office (LO):

Liaison Office may approach the **designated AD Category-I Bank** in India to open bank account to receive remittances from its Head Office outside India.

LO can open one bank account without permission from RBI. However, to open more than one account, prior permission from RBI is required.

The permitted Debits and Credits to the account shall be:

Permitted Debits	Permitted Credits
Only for meeting the local office expenses of the office.	(*a*) Funds from head office for meeting office expenses. (*b*) Refund of security deposit paid from liaison office account or directly by head office. (*c*) Refund of taxes, duties etc. paid from liaison office bank account. (*d*) Sale proceeds of assets of liaison office.

(B) Opening of bank account by Branch Office (BO):

A Branch Office may approach **any AD Category-I Bank** in India to open an account for its operations in India. The permitted Debits and Credits to the account shall be:

Permitted Debits	Permitted Credits
(*a*) Expenses incurred by branch office. (*b*) Remittance of profits and winding-up proceeds.	(*a*) Funds from head office to meet office expenses. (*b*) Legitimate receivables arising from business operations.

(C) Opening of bank account by Project Office (LO):

Project Office may approach the **AD Category-I Bank** in India to open bank account.

- *If the project office is of an entity not from Pakistan:* No prior approval of RBI is required.
- *If the project office is of an entity from Pakistan:* Prior approval of RBI is required.

AD Category – I banks can open non-interest bearing foreign currency account for POs in India subject to the following:

(*a*) The PO has been established in India, with the general/specific permission of RBI, having the requisite approval from the concerned Project Sanctioning Authority concerned as per FEM (Establishment in India of Branch Office or a Project Office or any other Place of Business) Regulations, 2016.

(*b*) The contract governing the project specifically provides for payment in foreign currency.

(*c*) Each PO can open two foreign currency accounts, usually one denominated in US$ and other in home currency, provided both are maintained with the same AD Category–I bank.

(*d*) The responsibility of ensuring that only the approved debits and credits are allowed in the foreign currency account shall rest solely with the AD Category-I bank. Further, the accounts shall be subject to 100% scrutiny by the Concurrent Auditor of the respective AD Category–I bank.

(*e*) The foreign currency accounts have to be closed at the completion of the project.

The permitted Debits and Credits to the account shall be:

Permitted Debits	Permitted Credits
(*a*) Payment for project related expenditure.	(*a*) Foreign exchange receipts from project sanctioning authority. (*b*) Foreign exchange receipts from parent/group company abroad or bilateral/multilateral international financing agency.

13. Examining the provisions of the FEMA, prepare a brief note for foreign entity which has established Branch Office/Project Office in India on following matters:

(*i*) Extension of Fund & Non-Fund Based facilities

(*ii*) Remittance of profits/surplus.

Ans.: Extension of Fund & Non-Fund Based facilities: AD Category-I bank may extend Fund/Non-Fund based facilities to BOs/POs only based on their business prudence, Board approved policy and compliance to extant rules/regulations stipulated by RBI.

Remittances of Profits/Surplus: As liaison office cannot undertake any business activities, the question of remittance of profits etc. by them does not arise. An overview of remittances of profits or surplus for branch and project offices is given below.

Branch Office	Project Office
Permitted, net of taxes.	Intermittent remittances permitted pending winding-up or completion of the project.
Following documents to be submitted with AD Bank: (*i*) Certified copy of audited balance sheet and profit and loss account for the relevant year. (*ii*) Chartered Accountant certificate certifying: ◆ Manner of arriving remittable profits ◆ Remittable profit has been earned by undertaking permitted activities ◆ Profits do not include any profit on revaluation of assets of the branch	Following documents to be submitted with AD Bank: (*i*) Auditors/Chartered Accountant Certificate confirming that a sufficient provision has been made to meet the liabilities in India including income tax. (*ii*) Undertaking from the project office that remittance will not affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittances from abroad.

14. Discuss briefly provisions and procedure relating to closure of Liaison Office/Branch Office established by foreign entity in India.

Ans.: Closure of office and remittance of winding-up proceeds: Requests for closure of the branch office/liaison office may be submitted to the AD Category-I bank along with the following documents:

(*i*) Copy of the RBI's/AD Category-I bank's approval for establishing the office.

(*ii*) Auditor's certificate:

- Indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets.
- Confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for.
- Confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India.

(*iii*) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the office and there is no legal impediment to the remittance.

(*iv*) A report from the RCC regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the branch office/liaison in India.

(*v*) Any other documents, specified by the RBI/AD Category-I bank while granting approval.

(*vi*) Remittance of winding-up proceeds of branch or liaison office established in India shall be governed by the guidelines issued under FEM (Remittance of Assets) Regulations.

15. A non-resident entity desires to set-up an equity based joint venture in India. However, there are certain restrictions under FDI Policy of Government of India. Describe the restrictions to a non-resident entity under FDI Policy of Government of India. [June 2023 (4 Marks)]

Ans.: Restriction on investment in India by a person resident outside India: As per Rule 3 of the FEM (Non-Debt Instruments) Rules, 2019, no person resident outside India shall make any investment in India.

The RBI may, on an application made to it and for sufficient reasons, permit a person resident outside India to make any investment in India subject to such conditions as may be considered necessary.

Restriction on receiving investment [Rule 4]: An Indian entity or an investment vehicle, or a venture capital fund or a firm or an association of persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books.

However, the RBI may, on an application made to it and for sufficient reasons, permit to receive any investment in India from a person resident outside India or to record such investment subject to such conditions as may be considered necessary.

Investments by person resident outside India [Rule 6]: A person resident outside India may make investment as under:

(*a*) May subscribe, purchase or sell equity instruments of an Indian company in the manner and subject to the terms and conditions specified in **Schedule I.**

However, a person who is a citizen of Bangladesh or Pakistan or is an entity incorporated in Bangladesh or Pakistan cannot purchase equity instruments without the prior government approval.

A citizen of Pakistan or an entity incorporated in Pakistan cannot invest in defence, space, atomic energy and sectors or activities prohibited for foreign investment even through the government route.

(*b*) A person resident outside India (*other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan*), may invest either by way of capital contribution or by way of acquisition or transfer of profit shares of an LLP, in the manner and subject to the terms and conditions specified in Schedule VI.

(*c*) A person resident outside India, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest in units of an investment vehicle, in the manner and subject to the terms and conditions specified in Schedule VIII.

(*d*) A person resident outside India may invest in the depository receipts (DRs) issued by foreign depositories against eligible securities in the manner and subject to the terms and conditions specified in Schedule IX.

Sectors prohibited for FDI: As per SCHEDULE I to the FEM (Non-Debt Instruments) Rules, 2019, investment by a person resident outside India is prohibited in following:

(*i*) Lottery business including Government or private lottery, online lotteries, etc.

(*ii*) Gambling and betting including casinos, etc.

(*iii*) Chit funds

(*iv*) Nidhi company

(*v*) Trading in Transferable Development Rights

(*vi*) Real estate business or construction of farm houses

Explanation: 'Real estate business shall not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.

(*vii*) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

(*viii*) Activities or sectors not open to private sector investment *e.g.* (I) Atomic energy and (II) Railway operations (other than permitted activities)

(*ix*) Foreign technology collaborations in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

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11 CHAPTER
SETTING-UP OF BUSINESS OUTSIDE INDIA AND ISSUE RELATING THERETO

1. Choice of business locations outside India involves consideration of many factors. Comment. [June 2019 (4 Marks)]

Or

Somit Kapoor is an Indian businessmen dealing in manufacturing of antique designer jewels. He has retail shops across all major cities in India. He wants to diversify his business geographically and plans to open retail outlets outside India. What are the aspects he should look into in choosing investment locations outside India? [June 2021 (5 Marks)]

Ans.: While setting-up any business outside India many issues are required to be taken into consideration. Such issues/aspects are discussed below:

Geographical Location of the business:

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

Economic Aspects:

- Ease of doing business: entering, establishing, restructuring and closing the business, visa availability.
- Cost of doing business
- Return on investment computations
- Laws relating to labour
- Laws relating to taxation: Investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double-taxation avoidance agreements, information sharing.

Political Aspects:

- Friendly relations of the countries & MFN status. [*MFN means Most Favoured Nation*]
- Long-standing and established legislative precedents with companies going through regulatory recourse
- Relations of country with its neighbouring countries.

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Social Aspects:

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

Technological Aspects:

- Intellectual property protection.
- Power, communication, telecom – availability, quality and cost Issues like infrastructure, geography, time zone, political considerations/conditions, safety of investments, economic policy and stability of the country, culture and language have a critical bearing on the strategy for globalization.
- Value systems and institutions are also becoming increasingly important from a long term perspective, in order to have the support of stakeholders.

Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances.

2. Briefly discuss the restrictions and prohibitions for making overseas direct investments.

Ans.: Restrictions & Prohibitions [Rule 19 of the FEM (Overseas Investment) Rules, 2022]

(1) **Prohibited activities/sectors:** No person resident in India shall make ODI in a foreign entity engaged in –

(*a*) Real estate activity

(*b*) Gambling in any form and

(*c*) Dealing with financial products linked to the Indian rupee without specific approval of the RBI.

(2) **ODI in Startups:** Any ODI in Startups recognized under the laws of the host country or host jurisdiction as the case may be, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

(3) **Restrictions on financial commitment in a foreign entity:** No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries.

Such restriction shall not apply to the following classes of companies mentioned in Rule 2(2) of the Companies (Restriction on Number of Layers) Rules, 2017 namely:

(*a*) Banking company

(*b*) NBFC registered with the RBI and considered as Systematically Important Non-Banking Financial Company.

(*c*) Insurance company

(*d*) Government company.

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3. Aadarsh Education Society, engaged in education sector, intends to make investment in the education sector in a joint venture in USA. Comment with reference to relevant rules made under the Foreign Exchange Management Act, 1999. [June 2012 (4 Mark)]

Or

What are the eligibility criteria for making investment in a trust outside India under the FEMA? [Dec. 2018 (4 Marks)], [Dec. 2019 (4 Marks)]

Ans.: As per Rule 14 read with Schedule IV of the FEM (Overseas Investment) Rules, 2022, Registered Trust or Society engaged in the educational sector in India may make ODI in a foreign entity with the prior approval of the RBI, if the foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in.

Conditions for ODI by Registered Trust or Society [Schedule IV]:

- The foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in.
- The Trust or the Society should have been in existence for at least 3 financial years before the year in which such investment is being made.
- The trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society shall permit the proposed ODI.
- Such investments have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society.
- In case the Trust or the Society requires special licence or permission either from the Ministry of Home Affairs or from the relevant local authority, the special licence or permission has been obtained and submitted to the designated AD bank.

Thus, Aadarsh Education Society, engaged in education sector can make investment in the education sector in a joint venture in USA by taking prior approval of RBI if it satisfies conditions specified in Schedule IV.

4. An Indian company intends to make direct investment in a joint venture outside India. Advice with reference to relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder. [Dec. 2012 (4 Mark)]

Ans.: As per Rule 11 of the FEM (Overseas Investment) Rules, 2022, an Indian entity may make Overseas Direct Investment (ODI) in the manner and subject to the terms and conditions prescribed in Schedule I.

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

Thus, an Indian company can make direct investment in a joint venture outside India subject to compliance of above stated provisions.

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5. What are the obligations of person resident in India which has made direct investment outside India? [Dec. 2018 (4 Marks)], [Dec. 2020 (4 Marks)]

Ans.: As per Regulation 9 of the FEM (Overseas Investment) Regulations, 2022, obligations of person resident in India which has made direct investment outside India are as follows:

(1) **Submission of relevant documents to AD bank:** A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit to the AD bank share certificates or any other relevant documents as per the applicable laws of the host country or the host jurisdiction, as an evidence of such investment in the foreign entity within 6 months from the date of effecting remittance or the date on which the dues to such person are capitalized or the date on which the amount due was allowed to be capitalized.

(2) **Unique Identification Number:** A person resident in India, through its designated AD bank, shall obtain a Unique Identification Number (UIN) from the RBI for the foreign entity in which the ODI is intended to be made before sending outward remittance or acquisition of equity capital in a foreign entity, whichever is earlier.

(3) **Transactions through designate AD bank:** A person resident in India making ODI shall designate an AD bank and route all transactions relating to a particular UIN through such AD. Where more than one person resident in India makes financial commitment in the same foreign entity, all such persons shall route all transactions relating to that UIN through the AD bank designated for that UIN.

(4) **Realization of dues:** A person resident in India having ODI in a foreign entity, wherever applicable, shall realize and repatriate to India, all dues receivable from the foreign entity with respect to investment in such foreign entity, the amount of consideration received on account of transfer or disinvestment of such ODI and the net realizable value of the assets on account of the liquidation of the foreign entity as per the laws of the host country or the host jurisdiction, as the case may be, within 90 days from the date when such receivables fall due or the date of such transfer or disinvestment or the date of the actual distribution of assets made by the official liquidator.

(5) **Remittance towards earnest money deposit or bid bond guarantee:** A person resident in India who is eligible to make ODI may make remittance towards earnest money deposit or obtain a bid bond guarantee from an AD bank for participation in bidding or tender procedure for the acquisition of a foreign entity.

(6) **Requirement as to bid bond guarantee:** In case of an open-ended bid bond guarantee, it shall be converted into a close-ended guarantee not later than 3 months from the date of award of the contract.

6. Can a Navratna Company in Oil & Gas sector in India, which are duly approved by the Government of India, wants to invest in Overseas Unincorporated entities in oil sector without any limit under automatic route? [Dec. 2020 (4 Marks)]

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Ans.: According to the Master Direction of RBI, Investment (or financial commitment) in unincorporated/incorporated entities overseas in oil sector under the Automatic Route are as under:

(1) Investments (or financial commitment) in unincorporated/incorporated entities overseas in the oil sector (*i.e.* for exploration and drilling for oil and natural gas, etc.) by Navaratna PSUs, ONGC Videsh Ltd (OVL) and Oil India Ltd (OIL) may be permitted by AD Category - I banks, without any limit, provided such investments are approved by the competent authority.

(2) Other Indian companies are also permitted under the Automatic Route to invest in unincorporated entities overseas in the oil sector up to the limit prescribed provided the proposal has been approved by the competent authority and is duly supported by certified copy of the Board resolution approving such investment.

Investment in excess of the prescribed limit shall require prior approval of the RBI.

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

7. 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? [June 2021 (4 Marks)]

Ans.: 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:

- *Prima facie* viability of the Overseas Investment.
- Contribution to external trade and other benefits which will accrue to India through such investment or financial commitment.
- Financial position and business track record of the India Party and the foreign entity.
- Expertise and experience of the India Entity in the same or related line of activity related to Overseas investment.

8. 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. [June 2022 (5 Marks)]

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Ans.: With the introduction of new Overseas Investment Rules & Regulations in 2022 all earlier Rules, Regulations and Master Directions are repealed and stand withdrawn.

Hence, answer as per new provisions is given below:

As per Rule 9 of the FEM (Overseas Investment) Rules, 2022, any investment made outside India by a person resident in India shall be made in a foreign entity engaged in a ***bona fide*** **business activity**, directly or through step down subsidiary or the special-purpose vehicle, subject to the limits and the conditions laid down in these rules and the FEM (Overseas Investment) Regulations, 2022.

"Bona fide business activity" shall mean any business activity permissible under any law in force in India and the host country or host jurisdiction, as the case may be.

Restrictions and prohibitions: No person resident in India shall make ODI without specific approval of the RBI in a foreign entity engaged in –

(*a*) Real estate activity

(*b*) Gambling in any form and

(*c*) Dealing with financial products linked to the Indian rupee.

Thus, Indian Entity ABC Ltd. may establish branch or firm outside India subject to compliance of above stated provisions and other provisions of the FEM (Overseas Investment) Rules, 2022 and the FEM (Overseas Investment) Regulations, 2022.

9. Agarwal Enterprises Ltd. (AEL) is a resident company in India for the last 15 years. The company is operating in various sectors e.g. power, infrastructure, ports, oil, telecommunications and IT etc. Now, the company is planning to make an investment of ₹ 10,000 Crore in Australia based solar power projects through the joint venture in Australia. The latest audited financial statements of the company revealed the following data as on 31st March, 2023.

Paid-up Share Capital	**: ₹ 2,000 Crore**
Reserve & Surplus	**: ₹ 1,000 Crore**
Long-term Borrowings	**: ₹ 1,500 Crore**
Creditors	**: ₹ 300 Crore**

Referring to the provisions of FEM (Overseas Investment) Rules, 2022 and Notifications issued by the RBI, advise whether the company can make desired investment under the automatic route in the financial year 2023-24. (Assume USD 1 = ₹ 80) [June 2023 (5 Marks)]

Ans.: A company defined under the Companies Act, 2013 is included in definition of "Indian Entity" and hence eligible for making Overseas Investment.

As per Rule 11 of the FEM (Overseas Investment) Rules, 2022, an Indian entity may make Overseas Direct Investment (ODI) in the manner and subject to the terms and conditions prescribed in Schedule I.

As per Para 3 of Schedule I, the total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall **not exceed 400% of its net worth** as on the date of the last audited balance sheet or as directed by the RBI, in consultation with Central Government from time to time.

Net worth of Agarwal Enterprises Ltd. = ₹ 2,000 Crore + ₹ 1,000 Crore = ₹ 3,000 Crore.

Maximum financial commitment by Agarwal Enterprises Ltd. = 3,000 Crore × 400% = 12,000 Crore.

Thus, Agarwal Enterprises Ltd. can make overseas investment of ₹ 10,000 Crore subject compliance of other applicable provisions.

12 CHAPTER

IDENTIFYING LAWS APPLICABLE TO VARIOUS INDUSTRIES AND THEIR INITIAL COMPLIANCES

FORMALIZING & DECIDING THE BUSINESS STRUCTURE

1. Hari wants to starts a manufacturing business but he is not able to decide on the form of business (type of business entity). He seeks your advice about the legal implication and requirements for the various business forms in India on the basis of following parameters.

(*i*) Registration

(*ii*) Members liability

(*iii*) No. of members required

(*iv*) Taxation

(*v*) Legal status **[June 2019 (5 Marks)]**

Ans.:

Points	Proprietorship	Partnership	LLP	Private Company
Registration	Not required	Optional	Compulsorily required to be registered under the LLP Act, 2008.	Compulsorily required to be registered under the Companies Act, 2013.
Liability	Unlimited liability	Unlimited liability	Limited liability of partners is to the extent of contribution towards to the LLP.	Limited liability of members is to the extent of unpaid amount on shares.
Minimum No. of persons	One person	Two person	Two person	Two person
Taxation	Taxed as per slab rates. Can claim basic exemption	Taxed at rate of 30% plus surcharge and cess. No basic exemption.	Taxed at rate of 30% plus surcharge and cess. No basic exemption.	Taxed at rate of 30% plus surcharge and cess. No basic exemption.
Legal Status	Not recognized as a separate entity	Not recognized as a separate entity	Recognized as a separate entity	Recognized as a separate entity

PARAMETERS FOR DECIDING BUSINESS STRUCTURE

2. Selecting the right structure from various structures can be an intimidating task for anyone but the clarity about the goal and scale of business ease out the process to a considerable extend. Explain.

Ans.: The business structure could be a decisive element in ensuring the success of the organization. Selecting the right structure from various structures can be an intimidating task for anyone but the clarity about the goal and scale of business ease out the process to a considerable extend. The parameters for deciding the business structure are listed below:

(*a*) **Control & Management:** Single Business Owners who has the ownership of all the investments should go for Sole Proprietorship/One Person Company. However, if two or more persons are involved then they can go for LLP or Public/Private Limited Company.

(*b*) **Capital Investments:** If anyone wants to obtain funds from an outside entity, such as an investor, bank, or venture capitalist, you must opt for an authentic business model such as private/public limited company. Companies have the liberty to escalate funds by selling shares whereas, sole proprietors can only raise funds *via* their personal accounts or by taking on partners. An LLP can encounter identical issues, although, as its own entity, it is not always required for the owner to utilize their personal assets or credit.

(*c*) **Liability Threshold & Personal Risk:** Owners would want to safeguard their risk under financial pressure. The right business structure could limit exposure to such risks. In the case of partnerships, the partner shares the responsibility to confront risk individually. Certain business structures such as HUF, Sole Proprietors and Partnerships have unlimited liability. Therefore, in case there is any default in the repayment of loans, the money will be recovered from the members or partners in profit sharing ratios. In these cases, the risk to the personal assets of the owners is high. Meanwhile, business models like LLP & Company provide comprehensive protection to the owner's liability with a few exceptions. Furthermore, one can also opt for One Person Company if he wishes to mitigate the personal risk to a larger extent.

(*d*) **Tax Obligation:** A tax obligation for an LLP owner is more or less equal to the sole proprietor. The income generated from the business is considered personal income and taxed accordingly. Small business owners do not wish to confront double taxation in the early stages. The LLP structure prevents that mishap and allows the owner to reap more income. Individuals in a partnership claim their respective profits as a personal income. A corporation addresses their tax liability each year, paying taxes on profits after deducting the expenses and payroll.

(*e*) **Licenses, Permits, & Regulations:** Apart from getting legal registration for the business, specific permits and licenses may be required to obtain to operate. Depending on the type of activities and business nature, it may require to be licensed at the local, state, and central levels.

(*f*) **Attracting Investors:** Having an unregistered business structure can be a hindering obstacle to attract an investor to raise some capital for the business.

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Legally established business structures like OPC, Public Company, LLP etc. are much more likely to get more confidence from investors firm.

FORMATION OF COMPANY

3. Discuss in detail the various steps required to be taken for registration of company.

Ans.: Company registration is also referred to as incorporation of company or formation of a business. Registering the company makes it a distinguished entity and gives legal existence. The company registration process in India is done under the Ministry of Corporate Affairs. It is crucial to be well informed by the registration process and a step-by-step guide to the company registration process in India is given below:

(1) **Apply for Director Identification Number (DIN):** All directors in a company need to acquire their Director Identification Number (DIN). DIN is a unique 8-digit number. The requirements for DIN include full name, father's name, date of birth, identity proof, address with proof, PAN card copy and two photographs of all the directors proposed. The application form is available online on MCA Website. The Form DIN-1 must be duly filled and uploaded after paying the applicable fees.

(2) **Apply for Digital Signature Certificate (DSC):** The company registration process in India requires every business to acquire a Digital Signature Certificate (DSC) to ensure a secure way to get the documents submitted electronically. The requisites for application of digital signature includes proposed directors' full name, father's name, date of birth, address with proof, PAN card copy, identity proof and a photograph. Normally this digital certification is valid for a period of one or two years, and after expiry, it should be renewed by the Controller of Certification Agencies (CCA).

(3) **Filing for New User Registration:** It is important to get registered on the MCA portal. A user account needs to be created for filing an e-Form, carrying out different transactions and paying the prescribed fees. The Ministry of Corporate Affairs does not charge any fee for creating an account.

(4) **Application for Company Name:** An application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICe+ and for change of name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices & Fees) Rules, 2014

(5) **Filing for Charter Documents:** In a company registration process, the applicants are required to create charter documents like Memorandum of Association (MOA) and Articles of Association (AOA).

(6) **Stamping of Company Documents:** The MOA & AOA are the most important documents to be submitted to the ROC for the purpose of incorporation of a company. The MOA states the constitution of the company, objectives, scope of activities of the company and also defines the relationship of the company with the outside world. The AOA contain the rules and regulations of the company for the management of its internal affairs. These documents

should be stamped and submitted to the ROC along with relevant forms and registration fee.

(7) **Certificate of Incorporation:** The ROC scrutinizes the documents and, if necessary, instructs the authorized person to make necessary corrections. Thereafter, a Certificate of Incorporation is issued by the ROC, from which date the company comes into existence. It takes one to two weeks from the date of filing of the MOA & AOA to receive a Certificate of Incorporation. Although a private company can commence business immediately after receiving the certificate of incorporation, a public company cannot do so until it obtains a Certificate of Commencement of Business from the ROC.

(8) **Register Other Details:** The next step in the company registration process in India includes registering the company name & address and notice for appointment of directors, secretary and manager. Following this, the company is required to register with the Office of Inspector, Shops & Establishment Act.

LAWS APPLICABLE TO VARIOUS INDUSTRIES

4. Adhering to labour laws is integral to every organization, small or big. Explain.

Ans.: Adhering to labour laws is integral to every organization, small or big. When a organization is established and it hires people to work, it is subject to several labour laws regardless of the size of the organization. Laws with regards to minimum wages, gratuity, PF payment, weekly holidays, maternity benefits, sexual harassment and payment of bonus among others will need to be complied with.

Some major labour laws applicable to most of organization are:

- Industrial Disputes Act, 1947
- Trade Union Act, 1926
- Industrial Employment (Standing Orders) Act, 1946
- Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979
- Payment of Gratuity Act, 1972
- Contract Labour (Regulation & Abolition) Act, 1970
- Employees Provident Funds & Miscellaneous Provisions Act, 1952
- Employees State Insurance Act, 1948.

An attractive employee policy can be the key to attract and retain good talent. Employee policies can also prove to be the starting point for boosting employee morale and increasing productivity.

5. Enumerate name of any five laws that are applicable to Insurance Sector.

Ans.: Various laws that are applicable to Insurance Sector are as follows:

- Insurance Act, 1938
- Insurance Regulatory and Development Authority Act, 1999

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- General Insurance Business (Na' alization) Act, 1972
- Industrial Disputes (Bankin urance Companies) Act, 1949
- Marine Insurance Act, 1°

6. Make a list laws that are on-Banking Financial Company (NBFC).

Ans.: List of laws that are spc o NBFCs:

- The RBI Act, 1934 & Ri delines, Circulars, Directions & Notifications made the
- Rules, regulations and g Reserve Bank of India as are applicable to Deposit tak ial Companies, Non-Deposit taking NBFC; Systemati
- Prevention of Money Lau
- Competition Act, 2002.
- Labour & Social Security Laws

7. 'A contract is required to ensure ing of work and is a great mechanism to ensure recourse ... lfilment of work'. Elucidate. ...ec. 2021 (5 Marks)]

Ans.: Usefulness of Contracts: 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.

Essential elements of contract: As per Section 10 of 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: 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 stock options (if any) with even your first few employees is always recommended. Having this clarity from the very beginning helps the new businesses to reduce risks at a later point in time. In the early stage of operations and post operation too, there are various contacts that a company has to abode, therefore, the adherence to contact law is one of the most important requirement for the company *per se*.

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13 CHAPTER VARIOUS INITIAL REGISTRATIONS & LICENSES

PERMANENT ACCOUNT NUMBER (PAN)

1. Rakshit is Science Graduate and just obtained Permanent Account Number from the Income Tax Department by submitting the necessary information and documents online. He is not aware for what purposes PAN is used and benefits of having PAN. As Consultant you are required to explain the benefits and use of having PAN to Rakshit.

Ans.: Following are some of the benefits/use/purposes of obtaining PAN:

IT Returns Filing: All individuals and entities that are required to pay Income tax have to file their IT returns. A PAN card is necessary for filing of IT returns, and is the primary reason individuals as well as other entities to apply for the same.

Opening a bank account: A PAN card is required in order to open a new bank account, whether it is a savings or a current account. All banks, whether public, private or co-operative, require the submission of a PAN card in order to open an account with them.

Applying for a credit or debit card: When applying for either a debit card or a credit card at any bank or financial institution, furnishing your PAN card details is mandated by regulations. The bank will not issue the card if this criterion is not met.

Purchase of jewellery: If you are looking at buying any sort of jewellery that is valued at over ₹ 5,00,000, you will have to provide your PAN card details at the time of purchase.

Making investments: Investing in securities is seen as a good way to build a wealth. If you are considering investing in securities, you would have to furnish your PAN details for any transactions amounting to above ₹ 50,000.

Proof of Identity: A PAN card is accepted as valid proof of identity anywhere in the country, and is also considered as proof of age. It can also be used as proof of identity when making an application for a passport, voter ID card, driving license, electricity connection etc.

Foreign Exchange: If you are travelling abroad and wish to convert your Indian currency into foreign currency, you are required to provide details of your PAN at the money exchange institution where you are converting the money.

Property: Buying, selling or renting property in India now requires PAN card proof. In the case of buying of property, the PAN details of the buyer as well as the seller have to be listed on the sales deed and any other such documentation for the sale to be complete.

Loans: If you are taking a loan, all loan providers, both banks as well as other lending institutions, require you to submit details of your PAN at the time of loan application.

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Fixed Deposits: If you plan on investing your money in a Fixed Deposit (FD) amounting to above ₹ 50,000 in a bank, you will have to provide your PAN details. This is done as the bank will deduct TDS (Tax Deductible at Source) on the FD interest amount.

Cash Deposits: If you are making a cash deposit that amounts to over ₹ 50,000 at a time, you will have to submit your PAN details as well. This is in keeping with the RBI mandate, which directs banks to report any large cash deposits to the RBI, as a way to prevent money laundering.

2. Any business entity doing business in India requires a PAN (Permanent Account Number) whether it is registered in India or not. Elucidate.
[Dec. 2018 (3 Marks)], [Dec. 2022 (3 Marks)]

Ans.: Permanent Account Number (PAN) is a code that acts as an identification for individuals, HUF and corporates (Indian and Foreign as well), especially those who pay Income Tax.

It is a unique, 10-character alpha-numeric identifier, issued to all judicial entities identifiable under the Income-tax Act, 1961. The Income Tax PAN code and its linked card are issued under section 139A of the Income-tax Act. It is issued by the Indian Income Tax Department under the supervision of the Central Board for Direct Taxes (CBDT) and it also serves as an important proof of identification.

Who is required to hold PAN Card in India: Any corporate body doing business in India requires a PAN card whether it is registered in India or abroad. Equally, an individual or entity which is engaged in a business with an Indian firm/entity requires a PAN card.

It is also required for anybody who is involved in generating money out of India whether the company is registered, or has a permanent establishment, or an office in India. Given below is a list of the entities that are required to hold a PAN card in India.

- Body Corporate
- Companies
- Firms
- One Person Company
- LLP
- Sole Proprietor
- Trusts
- Corporations
- Other Associations
- Foreign Institutional Investors
- Hedge Funds

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TAX DEDUCTION & COLLECTION ACCOUNT NUMBER

3. Referring to the relevant provisions of the Income-tax Act, 1961, answer the following:

(*i*) Who are required to apply for Tax Deduction & Collection Account Number (TAN)?

(*ii*) On which documents such TAN is required to be quoted?

(*iii*) What are the consequences of not quoting TAN?

(*iv*) Is it possible to quote PAN in place of TAN?

(*v*) Can taxpayer holder more than one TAN?

Ans.:

(*i*) **Meaning:** Tax Deduction Account Number or Tax Collection Account Number is a **10-digit alphanumeric number** issued by the Income-tax Department.

(*ii*) **Structure of TAN:** First 4 digits of TAN are alphabets, the next 5 digits of TAN are numeric and last digit is an alphabet.

First 3 alphabets of TAN represent the jurisdiction code, 4th alphabet is the initial of the name of the TAN holder who can be a company, firm, individual, etc. For example, TAN allotted to Mr. Mahesh of Delhi may appear as – DEL M 12345 L.

(*iii*) **Who are required to apply for TAN:** As per Section 203A of the Income-tax Act, 1961, every person, deducting or collecting tax shall within such time as may be prescribed, apply to the Assessing Officer for the allotment of a "Tax Deduction & Collection Account Number".

(*iv*) **Quoting of Tax Deduction & Collection Account Number:** A person to whom tax deduction and collection account number has been allotted shall quote such number on following documents:

- TDS statements *i.e.* return
- TCS statements *i.e.* return
- Statement of financial transactions or reportable accounts
- Challans for payment of TDS/TCS
- TDS/TCS certificates
- Other documents as may be prescribed.

(*v*) **Consequences of not quoting TAN:** Section 272BB(1) provides for penalty for failure to obtain TAN and section 272BB(1A) provides for penalty for quoting incorrect TAN. Penalty imposable under section 272BB is ₹ **10,000**.

(*vi*) **Government deductors are also liable to obtain TAN:** Like Non-Government deductors, the Government deductors are also required to apply for TAN.

(*vii*) **PAN cannot be quoted in place of TAN:** PAN should never be quoted in the field where TAN is required to be quoted. In other words, the deductor/collector cannot quote his PAN in place of TAN. If he does not possess TAN, then he has to apply for the same. However, a person required to deduct

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tax under section 194-IA can use PAN in place of TAN as such person is not required to obtain TAN.

(*viii*) **Taxpayer cannot hold more than one TAN:** It is illegal to possess or use more than one TAN. Different branches/divisions of an entity may, however, have separate TAN.

In case more than one TAN have been allotted, then the TAN which is being used regularly should be continued and the other TAN(s) should immediately be surrendered for cancellation using "Form for changes or correction in TAN" which can be downloaded from NSDL-TIN website or may be procured from TIN-FC.

(*ix*) **Changes in basic data communicated at the time of making the application for allotment of TAN:** Any change or correction in the data associated with TAN should be communicated to the Income-tax Department by filing up "Form for changes or correction in TAN data for TAN allotted" along with necessary fees at any of the TIN-FCs or NSDL-TIN website.

REGISTRATION UNDER GST

4. Certain categories of persons are not liable to register under the Central Goods & Services Tax Act, 2017. Explain.

Ans.: As per Section 23 of the Central Goods & Services Tax Act, 2017, following persons shall not be liable to registration under the GST:

- Any person engaged in the business of supplying goods or services or both that is *not liable to tax*.
- Any person engaged in the business of supplying goods or services or both that is *wholly exempt from tax*.
- An agriculturist, to the extent of supply of produce out of cultivation of land.
- Specified categories of persons notified by the Central Government on the recommendations of the GST Council.

5. Under what circumstances registration of taxable person can be cancelled under the GST Law?

Ans.: The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed.

Application for cancellation of registration shall be filed electronically in **Form GST REG-16.**

Cancellation of registration: As per Section 29(*1*) of the GST Act, 2017, the proper officer may cancel the registration in following cases –

- The business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed off.
- There is any change in the constitution of the business.
- The taxable person is no longer liable to be registered.

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Suspension of registration: However, during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

***Suo motu* cancellation of registration:** As per Section 29(2) of the CGST Act, 2017, the Proper Officer may cancel *Suo motu* the registration in following cases –

- A registered person has contravenes the provisions of the CGST Act or the rules made thereunder.
- A person paying tax has not furnished returns for a financial year beyond 3 months from the due date of furnishing the said return.
- Any registered person [*other than a person specified above clause*], has not furnished returns for such continuous tax period as may be prescribed.
- Any person who has taken voluntary registration has not commenced business within 6 months from the date of registration.
- Registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

The proper officer shall not cancel the registration without giving the person an opportunity of being heard.

6. Registration under the Central Goods & Services Tax Act, 2017 is made compulsory in certain cases, irrespective of the aggregate turnover. Explain. [Dec. 2018 (4 Marks)]

Or

Central Goods & Services Tax Act, 2017 prescribe the cases where registration under the Act is compulsory, irrespective of the aggregate turnover. Discuss. On the other hand, under CGST Act, 2017 there are certain people who are not liable to be registered. Discuss. [Dec. 2022 (3 + 2 = 5 Marks)]

Ans.: Persons required to be compulsorily registered under the GST Law: Provisions of compulsory registration are contained under section 24 of the CGST Act, 2017. Categories of persons who are required to obtain compulsory registration are listed herein below –

- Person engaged in the inter-state taxable supply.
- Casual taxable person.
- Persons taxable under reverse charge mechanism.
- Non-resident taxable person.
- Person liable to pay tax under section 9(5) of the Act.
- Person liable to deduct tax at source (TDS).
- Input Service Distributor.
- E-commerce operator who is required to collect tax at source.
- Person engaged in supply through e-commerce operator who is required to collect tax at source (TCS).
- Person engaged in supplying online information and database access or retrieval services from a place outside India to an unregistered person.

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- Persons engaged in the taxable supply of goods or services or both on behalf of another registered taxable person, whether as an agent or otherwise.

It must be noted that categories of the person covered under compulsory registration are mandatorily required to obtain registration irrespective of quantum of turnover.

Persons not required to be registered under the GST Law: As per Section 23 of the GST Act, 2017 following persons shall not be liable to registration:

(*a*) Any person engaged exclusively in the business of supplying goods or services or both that are *not liable to tax* or *wholly exempt from tax* under the GST Act, 2017 or under the IGST Act, 2017.

(*b*) An agriculturist, to the extent of supply of produce out of cultivation of land.

The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under the GST Act, 2017.

7. Write a short note on: GSTIN

Ans.: The registration in GST is based on Permanent Account Number and State specific. Supplier has to register in each of such State or Union territory from where he makes supply. In GST registration, the supplier is allotted a 15-digit GST Identification Number called 'GSTIN' and a certificate of registration incorporating therein this GSTIN is made available to the applicant on the GSTN common portal.

- First two digits of this number will represent the State code.
- Next ten digits will be the PAN number of the taxpayer.
- Thirteenth digit will be assigned based on the number of registrations within a State.
- Fourteenth digit will be Z by default.
- Last digit will be for check code.

Registration under GST is not tax specific, which means that there is a single registration for all the taxes *viz.*, CGST, SGST/UTGST, IGST and cesses.

Multiple Registrations: A given PAN based legal entity would have one GSTIN per State, that means a business entity having its branches in multiple States will have to take separate State wise registration for the branches in different States.

Single Registration: An entity with different branches within a State would have single registration wherein it can declare one place as principal place of business and other branches as additional place of business.

8. Rajesh is planning to start a small manufacturing business in Pune City. As per his estimate his turnover in first is likely to be up to ₹ 65 lakh. Examining the provision of the GST Law, provide suitable advice to Rajesh on following matters:

(*i*) What is the Composition Scheme under GST?

(*ii*) Persons who cannot opt for Composition Scheme?

(*iii*) What are the GST Rates under the Composition Scheme?

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(iv) What Form & Return is required to be filed by a person opting for Composition Scheme?

(v) How much CST Rajesh will be required to pay in first year of business if opts for Composition Scheme?

Ans.:

(i) Composition Scheme under GST:

- The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to ₹ 1.5 Crore (₹ 75 lakh in case of few States).
- The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers.
- Composition scheme is optional and the eligible person opting to pay tax under composition scheme can pay tax at a prescribed percentage of his turnover every quarter, instead of paying tax at normal rate.
- Composition Scheme is now made available to service providers whose aggregate annual turnover does not exceed ₹ 50 lakh. Both exclusive service providers and mixed service providers of goods and services can opt for this scheme.

(ii) Persons not eligible for Composition Scheme:

- Person making supply of goods which are not liable to be taxed under GST Law.
- Person making Inter-State outward supplies of goods.
- Person making supplies through electronic commerce operators who are required to collect tax under section 52.
- Manufacturer of notified goods.
- Casual dealer.
- Non-Resident Foreign Taxpayer.
- Person registered as Input Service Distributor (ISD)
- Person registered as TDS Deductor/Tax Collector.

(iii) GST Rates under the Composition Scheme: Under the Composition Scheme, a taxpayer will pay tax as a percentage of his turnover during the financial year without the benefit of Input Tax Credit. A taxpayer opting for composition scheme will not collect any tax from his customers and show only Bill of supply instead of invoice. The floor rate of tax for CGST and SGST are as follows:

Manufacturers & Traders	: 1%
Restaurants (*not serving alcohol*)	: 5%
Other service providers	: 6%

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(*iv*) **Form & Return:** When the eligible taxpayer is opting for the Composition Scheme under GST, a taxpayer has to file a quarterly statement in Form CMP-8 and a return in Form GSTR-4 annually.

(*v*) **GST payable by Rajesh:** ₹ 65,00,000 × 1% = ₹ 65,000.

REGISTRATION OF SHOPS & ESTABLISHMENTS

9. Ramesh has purchased a shop in local market of New Delhi and wants to setup a business of electronic goods. Is he required to get his shop registered under the Shops and Establishment Act? If so, advice him with the procedure. [Dec. 2018 (3 Marks)]

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. [June 2022 (3 Marks)]

Ans.: A business owner of a shop or establishment, are compulsorily required to get the same registered under the Shops and Establishment Act of the State where business is located.

Procedure for registration of the Shops and Establishment differs from State to State as each State have their own Shops and Establishment Act.

Generally following procedure can be adopted for registration of the Shops and Establishments:

(1) **Application:** Submit an application in the prescribed form to the Inspector of the area within 30 days of starting any work in shop/establishment. The application is to be submitted along with the prescribed fees and should contain the following information:

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

(2) **Verification:** Upon receiving the application for registration and the fees, the Inspector shall verify the accuracy and correctness of the application.

(3) **Issue of registration certificate:** Once suitably satisfied, he shall enter the details in the Register of Establishments and issue a registration certificate.

(4) **Validity of certificate:** The certificate will be valid for the specified period and has to be renewed thereafter.

(5) **Display of certificate:** It is important that the registration certificate has to be prominently displayed at the shop or establishment.

10. Explain the procedure to be adopted for change in address of business premises under the Shops & Establishment Act.

Ans.: Communication of change to the Inspector: In case of any change with respect to any of the information given during the application for registration, the same has to be notified to the Inspector's office within 15 days after the change has taken place. *[Period of 15 days specified here may differ from State to State as each State have its own Shop & Establishment Act]*

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The Inspector will verify the correctness of the details furnished, make the related change in the Register of Establishments, amend the registration certificate or issue a fresh registration certificate.

Closing of Establishment to be communicated to Inspector: In case the shop or establishment would like to close down the business, the occupier should notify the Inspector in writing within 15 days of the closing.

The Chief Inspector after reviewing the request for closure can remove the shop or commercial establishment from the register and cancel the registration certificate.

11. Define term "Commercial Establishment" under Shop & Establishment Act. [Dec. 2022 (2 Marks)]

Ans.: One of the important regulation to which most businesses in India are subject to is the Shop and Establishment Act, enacted by every State in India. The Act is designed to regulate payment of wages, hours of work, leave, holidays, terms of service and other work conditions of people employed in shop and commercial establishments.

Commercial Establishment: Commercial establishment means –

(*i*) A premise where any trade, business, profession or any work is undertaken.

(*ii*) Which may include society, charitable or another trust, journalistic and printing establishments, contractors and auditors establishments, educational institutes, premises where the business of banking, insurance stocks, and shares, the brokerage is undertaken, restaurants and eating houses, residential hotels, clubs, theatres and other places of public amusement or entertainment.

Establishments are defined as shop, a commercial establishment, residential hotel, restaurant, eating-house, theatre or other places of public amusement or entertainment. Further, establishments may also include such other establishments as defined by the Government by notification in the Official Gazette.

However, factories are not covered by the Shops & Establishments Act and are regulated by the Factories Act, 1948.

ESI REGISTRATION

12. What do you understand by the Employee State Insurance Scheme?

Or

PT Pvt. Ltd., is engaged in the business of textile related products and employs 20 employees. Out of which, 11 employees draw a monthly salary of more than ₹ 25,000 each and 9 employees draw a monthly salary of less than ₹ 20,000 each. Because of this the Management of the Company is of the view that the Company is not covered under Employee's State Insurance (ESI) Act, 1948. Referring to relevant provisions clarify whether the contentions of the Management of PT Pvt. Ltd. is correct. [June 2021 (3 Marks)]

Ans.: Employee State Insurance: ESI stands for Employee State Insurance managed by the Employee State Insurance Corporation which is an autonomous body created under the Employees State Insurance Act, 1948 and works under the Ministry of Labour and Employment, Government of India.

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Benefits to workers: This scheme is started for Indian workers. The workers are provided with a huge variety of medical, monetary and other benefits from the employer.

Applicability: Any employer having more than 10 employees (*in some states it is 20 employees*) who have a maximum salary/wage of ₹ 21,000 per month has to mandatorily register itself with the ESIC. Wage limit for Employees with 'Disability' is ₹ 25,000 per month. Employees with higher wages are exempt.

Contribution: Under ESI Scheme, the employer needs to contribute an amount of **3.25%** of the total monthly salary payable to the employee whereas the employer needs to contribute only **1.75%** of his monthly salary every month of the year.

Registration depends on the number of employees and not on earnings of the Employees. *Though employees drawing more than ₹ 21,000 per month are exempt for ESI contribution. Registration limit is mandatory, if a Company has more than 10 employees, Accordingly PT Pvt. Ltd. has to obtain registration, even if the number of employees who are contributing is less than 10.*

13. State the procedure for registration of employers and employees under the ESI Scheme.

Ans.: ESI Registration Procedure of Employer: Any employer having more than 10 employees is mandatorily required to take up the ESI Registration.

Within 15 days of submission of Employer's Registration Form (Form 1), the company or firm is expected to obtain an Identification number or Code Number from the Regional office. This figure will be used in correspondence related to the scheme.

Documents required:

- Documents about the establishment of the company.
- Evidence supporting date of commencement of production/business.
- List of partners, stakeholders, directors along with necessary information and proof of address.
- Copy of PAN
- Identity proof like Voter ID/passport
- List of employees

Registration of Employee: At the time of joining the Establishment, an employee is required to fill the Declaration Form with a copy of the family photo which the employer will be submitting at the ESI branch office.

Within 3 months a permanent Photo ID is provided to the employee with insurance number for identification purpose under the scheme.

14. 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. [Dec. 2021 (5 Marks)]

Ans.: 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 organization.
- 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 resulting in loss of wages since the responsibility of paying cash benefits shifts from employer to the ESIC in respect of insured employee.
- Any amount or sum paid by way of contribution under the Employees State Insurance Act, 1948 is deducted in computing 'Income' under the Income-tax Act, 1961.

PF REGISTRATION

15. State the procedure for registration of establishment under the law governing the provident fund.

Ans.: To provide financial stability and security to employees when they are temporarily or no longer fit to work, the Parliament enacted the Employee's Provident Fund Scheme (EPFS) 1952. The Central Government trust manages these funds, and employees are required to contribute a part of their salary to it every month during their employment tenure.

An establishment with less than 20 employees can voluntarily opt for PF registration. However, establishment with more than 20 employees compulsorily have to register.

PF Registration Process:

- A detailed application form in Form 5A with Annexure-1 has to be filed while registering the company online.
- After that, a temporary PF registration number allotted, and an employer has to submit all concerning documents online.
- After that, the PF authorities carry out an inspection of the premises and verify the documents submitted online.
- PF allotment letter will be issued.

Documents required to be submitted: The documents required to submit with the Performa of coverage for EPF along with list of employees are listed below.

- A copy of MOA, AOA and the certificate of incorporation issued by the ROC, in the case of companies.

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- A copy of partnership deed in the case of partnerships.
- A copy of Registration certificate issued by the Registrar of Co-operative societies.
- A copy of Registration certificate issued by Registrar in the case of societies registered under Societies Registration Act along with a copy of the objects and Rules of the Society.
- Partition deeds creating HUF.
- Any agreement or other legal documents in the case of Association of persons as defined in the Income-tax Act.

ENVIRONMENTAL LAWS

16. Write a short note on: Regulatory framework for environmental protection in India. [June 2009 (5 Marks)], [June 2011 (5 Marks)]

Ans.: With the endowed protection to environment under the Constitution and Specific Statutes, all persons, be it natural or legal including a Company owes a duty to conduct themselves in such a manner that their act or omission should not pollute the environment. Therefore, a company is necessitated to abide by various laws in order to protect the environment. For pollution control and protections following laws are enacted by the Central Government:

- Environment (Protection) Act, 1986
- Air (Prevention & Control of Pollution) Act, 1981
- Water (Prevention & Control of Pollution) Act, 1974
- Water (Prevention & Control of Pollution) Cess Act, 1977
- Public Liability Insurance Act, 1991
- National Green Tribunal Act, 2010
- Biological Diversity Act, 2002
- Hazardous Wastes & Other Wastes (Management, Handling & Transboundary Movement) Rules, 2016

17. Sukhdev Industry Ltd., situated in the vicinity of Tajmahal, Agra (U.P.), is causing air, water and noise pollution. The people living in the area have made a written complaint to the Central Government against the company for issuing the necessary directions. State the different directions that can be issued by the Central Government to Sukhdev Industry Ltd. under the Environment Protection Act, 1986. [June 2023 (5 Marks)]

Ans.: Under the Environment (Protection) Act, 1986, the Central Government is empowered to take measures necessary to protect and improve the quality of environment by setting standards for emissions and discharges of pollution in the atmosphere by any person carrying on an industry or activity; regulating the location of industries; management of hazardous wastes and protection of public health and welfare.

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From time to time, the Central Government issues notifications for the protection of ecologically-sensitive areas or issues guidelines for matters under the Environment (Protection) Act, 1986.

The direction may include:

- Closure, prohibition or regulation of any industry.
- Stoppage or regulation of the supply of electricity, water or any other service.
- Prevent discharges or emissions excess of the prescribed standards.
- Furnish information of any accidental or unforeseen event.
- Allow entry and inspection to ascertain compliance.
- Allow samples to be taken.
- Submit an "Environmental Statement" every year to the SPCB.
- Obtain prior "Environmental Clearances" from MoEF, in case of a new project or for modernization/expansion of the existing project.

18. What conditions are required to be satisfied by the White Category of industries to be eligible for pollution license exemption?
[June 2023 (3 Marks)]

Ans.: Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project, for 30 types of projects as listed, environmental clearance needs to be obtained from the Ministry of Environment, Government of India. This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper *etc.*

State Pollution Control Board is the concerned authority to obtain a pollution license/Certificate or consent to establish such business. The permission is obtained in two stages:

(*i*) Consent to establish (CTE) will have to be obtained prior to commencement of construction or any similar activities to start the business.

(*ii*) Once the construction/set up phase is complete, then a consent to operate (CTO) has to be applied and obtained. This CTO will usually be valid for a period of 5 years, which may vary State to State.

The Central Pollution Control Board has specified list of industries as requiring a pollution license. The Ministry of Environment carries out this classification, Forest and Climate Change, to differentiate between industries with the highest pollution index and those with the lowest as follows:

(*a*) Red Category: These industries have the highest pollution index, such as big manufacturing industries, large hotels, super specialty hospitals *etc.*

(*b*) Orange Category: These industries are relatively medium-sized enterprises, which still generates comparatively high levels of pollutants like cashew nut processing, coffee seed processing, pharmaceutical formulation.

(*c*) Green Category: These are the industries with low pollution Index like small bakeries, storage of food grains, leather footwear, and products, cement products.

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(*d*) White category: These are the industries with no pollution practically like Biscuit trays, rolled PVC sheet (using automatic vacuum forming machines),

Industries categorized under Red, Orange and Green category are covered under consent management for obtaining Consent to Establish (CTE) and Consent to Operate (CTO) under Water Act, 1974 and Air Act, 1981.

Industries which fall under White Category are exempted from obtaining consent under the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981.

Industries and business under White Category need to self govern themselves and need to intimate various State Pollution Control Board (SPCB) within 30 days of commencement of their business.

19. Entrepreneurs are required to obtain Statutory Clearances relating to Pollution Control and Environment while setting-up an Industrial Project. Central Pollution Control Board has specified list of industries requiring pollution license/certificate or consent. Ministry of Environment carries on the classification from higher to lowest Pollution Index and categorized the industries. Explain. [Dec. 2022 (5 Marks)]

Ans.:

- Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project, for 39 types of projects as listed, environmental clearance needs to be obtained from the Ministry of Environment, Forest and Climate Change, (MoEFCC) Government of India. This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper etc.
- State Pollution Control Board is the concerned authority to obtain a pollution License/Certificate. The permission is obtained in two stages:
  - (*i*) **Consent to establish (CTE):** To be obtained prior to commencement of construction or any similar activities to start the business. License valid for a period 1 to 7 years according to request made by Project Developers/Designers/Investors.
  - (*ii*) **Consent to operate (CTO):** To be applied and obtained before starting production activity on the Unit. CTO License valid for a period of 5 years, which may vary State to State.
- The MoEFCC has categorized the industries based on Range of Pollution Index and grouping of Industrial Sectors based on use of Raw Materials, manufacturing Process adopted and pollutants likely to be generated as follows:

Category	Pollution Index Score (PSI)	Number of Industries
Red Category	Industrial Sectors having PSI of 60 and above	60
Orange Category	Industrial Sectors having PSI of 41 to 59	83

Category	Pollution Index Score (PSI)	Number of Industries
Green Category	Industrial Sectors having PSI of 21 to 40	63
White Category	Industrial Sectors having PSI inclusive and up to 20	36

- Industries were categorized under red, orange and green category are covered under consent management for obtaining Consent to Establish (CTE) and Consent to Operate (CTO) under the Water (Prevention & Control of Pollution) Act, 1974 [Water Act] and Air (Prevention & Control of Pollution) Act, 1981 [Air Act].

  Industry which fall under white category is exempted from environment clearance and obtaining consent under the Water Act/Air Act.

  Industries and business under white category need to self-govern themselves and need to intimate various State Pollution Control Board (SPCB) within 30 days of commencement of their business.

- White Category of industries has to satisfy following conditions to be eligible for pollution license exemption:

  1. The industry is being established in the locality demarcated for them.
  2. Their investment in the industry is not more than ₹ 1 Crore on plant and machinery.
  3. There will not be any discharge of trade effluent from the industry into stream or well or sewer or onto land and that industry will not discharge any air pollution including noise into the atmosphere.
  4. The industry will not discharge any toxic/hazardous wastes and will not handle any toxic/hazardous chemicals.

IE CODE REGISTRATION

20. Ambika is running a business of handicraft in Jaipur. She has explored some opportunities for handicraft products aboard and she wants to encash the huge demand outside India for such products. She seeks your advice whether she would be required to get himself registered with Directorate General of Foreign trade (DGFT) for exporting goods. If yes, what are all the documents required for such registration? Also enlighten her the features available from such registration.

[June 2019 (5 Marks)], [June 2022 (3 Marks)]

Or

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

[Dec. 2021 (3 Marks)]

Ans.: Importer-Exporter Code (IEC): An IEC is a 10-digit number allotted to a person that is mandatory for undertaking any export and import activities.

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No Export/Import without IEC: All businesses which are engaged in Import and Export of goods are required to register for Import Export Code.

Importers are not allowed to proceed without this code and exporters cannot take benefit of exports from DGFT, customs, Export Promotion Council, if they do not have this code.

Application IEC: An application for IEC may be filed online along with specified fee, to be paid online through net banking or credit/debit card.

Documents Required for IEC Registration:

- Proof of establishment/incorporation/registration as Partnership/Company/ Registered Society/Trust/HUF/Others.
- Proof of Address can be any one of the following documents:
  - Sale Deed, Rent agreement, lease deed, electricity bill, telephone land line bill, mobile, postpaid bill, MOU, Partnership deed.
  - Other acceptable documents (for proprietorship only): Aadhaar card, Passport, Voter ID.
  - In case the address proof is not in the name of the applicant firm, a no objection certificate (NOC) by the firm premises owner in favour of the firm along with the address proof is to be submitted as a single PDF document.
- Proof of Firm's Bank Account such as Cancelled Cheque or Bank Certificate.
- User should have an active DSC or Aadhaar of the firm's member for submission.
- Active Firm's Bank account for entering its details in the Application and to make online payment of the application fee.

So, Ambika is required to submit all these documents to DGFT before starting export.

21. Registration of Import-Export Code (IEC) has lifetime validity. In view of the statement, mention essential features of IEC registration.
[Dec. 2020 (3 Marks)]

Ans.: Features of the Import Export Code (IEC) Registration:

(1) **International Exposure:** IEC Code helps to grow business from local market to international market and expand product or service across the global.

(2) **Government Benefits:** Government of India always promote the export activity in India so through IEC Code Registration one can avail all the export scheme benefits from DGFT, Customs and Export Promotion Council.

(3) **No Renewals:** IEC Code issued by the DGFT for the lifetime validity so there is no need to renew it every year.

(4) **No Annual Compliance:** IEC Code have no annual compliance like returns filings etc.

(5) **Individual Person:** IEC Code can be obtained by the individuals and it not necessary that business must be set-up as Firm or Company.

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DRUG LICENSE

22. Ameer is a registered Pharmacist under State Pharmacy Council wants to start his own pharmacy shop in India, for which he requires Drug license. Suggest him the minimum requirements for obtaining the Drug license.
[June 2021 (3 Marks)]

Or

Namit has completed his diploma in pharmacy from a premier institute and wants to start wholesale Drug business. He seeks to get registered himself as wholesale drug dealer in State Drugs Standard Control Organization. Explain him the minimum requirements before applying wholesale drug license.
[June 2022 (3 Marks)]

Ans.: In India import, manufacturing, sale and distribution of drug is regulated under **Drugs & Cosmetics Act, 1940** and **Drugs and Cosmetic Rules, 1945.**

To start a pharmacy business, a drug license is required. The *Central Drugs Standard Control Organization* & *State Drugs Standard Control Organization* control the issue of drug license in India.

Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization. Normally, the Drug Control Organization issues two types of licence for operating a pharmacy business.

(1) **Retail Drug License (RDL):** It is the issued to run a general chemist shop.

(2) **Wholesale Drug License (WDL):** It is the issued to persons or agencies engaged in wholesale of drugs and medicines.

In most States a retail drug license is only issued to persons who possess a Degree/ Diploma in pharmacy from a recognized Institute or University on account of the fact that it is a specialized job and only qualified persons can handle it. A person applying gas pay specified fee for obtaining the license.

Requirements for obtaining Drug License: Following are minimum requirements for obtaining drug license or starting a pharmacy business in India:

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

(2) **Storage Facility:** The store must have refrigerator & air conditioner in the premises. According to current prevailing guidelines certain drugs like vaccines, sera, insulin injections etc. are required to be stored in the refrigerator.

(3) **Technical Staff:**

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

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

FSSAI

23. What do you understand by 'FSSAI Licensing & Registration'? Who is Petty Food Business Operator? What is the registration process of such food business in India?

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. [Dec. 2020 (5 Marks)]

Or

Ramesh is running a fast food shop in Chandni Chowk, Delhi. He seeks your advice on the requirement of obtaining FSSAI Registration. Advise Ramesh. [Dec. 2021 (3 Marks)]

Or

Ramesh is going to setup a manufacturing, storing and packaging plant of cow ghee. He seeks your advice on the types of FSSAI license required to take before starting food business. Advise. [Dec. 2022 (3 Marks)]

Ans.: FSSAI – Meaning: FSSAI stands for Food Safety and Standards Authority of India which is an organization that monitors and governs the food business in India. It ensures the food products undergo quality checks thereby curtailing the food adulteration and sale of sub-standard products.

It is responsible for the registering and licensing of the food business operators (FBO) in India and it lays down the rules and regulation for running the food business in India.

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.

The registration and licensing of food business in India is governed by the **Food Safety and Standards (Licensing & Registration of Food Businesses) Regulation, 2011**. As per the regulation, all food business operators in India must have a FSSAI registration or license if they are involved in the manufacturing, storage, transportation or distribution of food products. Based on the size a nature of business, FSSAI registration or FSSAI license may be required.

FSSAI License & Registration:

FSSAI Online Registration is done through official website of FSSAI for basic and central level. For state, the FSSAI registration is also done through offline mode.

Petty Food Business Operator: FSSAI registration is required for all Petty Food Business Operator. 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

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(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 ₹ 12 lakh and whose:

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

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

FSSAI registration certificate contains the details of registration and a photo of the applicant. The certificate must be prominently displayed at the place of food business, at all times while carrying on the food business.

24. 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. [June 2021 (5 Marks)]

Ans.: 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:

- Distillation and brewing of alcoholic drinks.
- Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
- Electronic Aerospace and defense equipment of all types.
- Industrial explosives including detonating uses, safety fuses, gun power, nitrocellulose and matches.
- 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.

NBFC LICENSE

25. What do you understand by 50-50 test in relation to obtaining NBFC registration with the RBI? Also state the financial companies which are exempted from obtaining NBFC registration.

Ans.: NBFC – Meaning: A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 2013 that is engaged in the business of loans and

advances, receiving deposits, acquisition of stocks or shares, leasing, hire-purchase, insurance business, chit business.

Requirement of NBFC registration with RBI: No NBFC shall commence or carry on the business of a non-banking financial institution without –

(*a*) Obtaining a certificate of registration.

(*b*) Having the **net owned fund** of **₹ 25 lakh** or such other amount, **not exceeding ₹ 100 Crore**, as the RBI may specify.

The RBI may notify different amounts of net owned fund for different categories of non-banking financial companies.

Financial activity as principal business:

- Company's financial assets (cash and cash equivalents, debtors, securities, cash in bank etc.) constitute more than 50% of the total assets
- Income from financial assets constitutes more than 50% of the gross income.

A company which fulfils both these criteria must take NBFC registration with RBI under section 45-IA of the RBI Act of 1934.

This test for NBFC registration is popularly known as the 50-50 test.

Therefore, companies engaged in agricultural operations, industrial activity, purchase and sale of goods, providing services or purchase, sale or construction of immovable property as their principal business and are doing some financial activity in a small way, will not require NBFC registration.

Financial Companies exempt NBFC License: Following types of entities that are involved in the principal business of financial activity do not require NBFC registration with RBI:

- Housing Finance Companies – Regulated by the National Housing Bank (NHB) & RBI.
- Insurance Companies – Regulated by Insurance Regulatory & Development Authority of India (IRDA).
- Stock Broking – Regulated by SEBI.
- Merchant Banking Companies – Regulated by SEBI.
- Venture Capital Companies – Regulated by SEBI.
- Companies that run Collective Investment Schemes – Regulated by SEBI.
- Mutual Funds – Regulated by SEBI.
- Nidhi Companies – Regulated by the MCA.
- Chit Fund Companies – Regulated by the respective State Governments.

The above types of companies have been exempted from NBFC registration requirements and NBFC regulations of RBI as they are regulated by other financial sector regulators.

26. 'Non-Banking Financial Companies' are akin to that of bank, but they differ from banks in certain cases. Explain. [June 2019 (4 Marks)]

Ans.: NBFC – Meaning: A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 2013 that is engaged in the business of loans and

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advances, receiving deposits, acquisition of stocks or shares, leasing, hire-purchase, insurance business, chit business.

Difference between NBFC & Bank: NBFCs are doing functions similar to banks. NBFCs lend and make investments and hence their activities are akin to that of banks; however there are a few differences as given below:

- NBFC cannot accept demand deposits.
- NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself.
- Deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

27. Define the term 'Net Owned Fund'. [Dec. 2020 (4 Marks)]

Ans.: Net Owned Fund [Explanation to Section 45-IA of RBI Act, 1934]: Net Owned Fund means:

(*a*) The aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the company after deducting therefrom:
- Accumulated balance of loss
- Deferred revenue expenditure
- Other intangible assets

(*b*) Further reduced by the amounts representing:
(*i*) Investments of such company in shares of:
- Its subsidiaries
- Companies in the same group
- All other non-banking financial companies.

(*ii*) Book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with:
- Subsidiaries of such company
- Companies in the same group, to the extent such book value exceeds 10% of (*a*) above.

Registration with RBI: In terms of Section 45-IA, all Non-Banking Financial Companies have to be mandatorily registered with the RBI.

BANKING

28. What is minimum paid-up voting equity capital requirement for banking business? Also state the conditions are required to be fulfilled to carry on banking business in India as per Section 12 of the Banking Regulation Act, 1949?

Ans.: Licensing of Banking Companies: Licensing of Banking Companies is governed by Banking Regulation Act, 1949. To be registered as a banking company,

the entity must be a company registered under the Companies Act, 2013 or previous company laws or a foreign company having the prescribed minimum paid-up capital.

Capital requirement: The minimum paid-up voting equity capital for a bank shall be ₹ 500 Crore for universal banks and ₹ 200 Crore for small finance banks. And any addition to this capital will be based upon the plan presented by the promoters of the bank to the RBI.

Conditions for carrying banking business: According to Section 12 of the Banking Regulation Act, 1949, no banking company is allowed to carry on its business unless it satisfies the following conditions:

(1) Its subscribed capital is not less than one-half of its authorized capital.

(2) Its paid-up capital is not less than one-half of the subscribed capital.

(3) The capital of the company consists of ordinary shares, equity shares and preference shares. However, the issue of preference share shall be in accordance with the guidelines framed by the RBI.

(4) No person holding shares in a banking company shall have voting rights of above 10% of total voting rights of all the shareholders.

(5) Every managing executive of the bank needs to disclose, to the RBI, the extent and the amount of his shareholding in the firm.

29. Discuss the provisions relating to licensing of banking companies under the Banking Regulation Act, 1949?

Ans.: Licensing of banking companies [Section 22]:

(1) **License to carry on banking business:** No company shall carry on banking business in India unless it holds a license issued in that behalf by the RBI and any such license may be issued subject to such conditions as the RBI may think fit to impose.

(2) **Application for license:** Every company before commencing banking business shall apply in writing to the RBI for a license under this section.

(3) **Inspection of the books:** Before granting any license under this section, the RBI may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled:

(*a*) That the company is or will be in a position to pay its present or future depositors in full as their claims accrue.

(*b*) That the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors.

(*c*) That the general character of the proposed management of the company will not be prejudicial to the public interest of its present or future depositors.

(*d*) That the company has adequate capital structure and earning prospects.

(*e*) That the public interest will be served by the grant of a license to the company to carry on banking business in India.

(*f*) That having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for

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expansion of banks already in existence in the area and other relevant factors the grant of the license would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth.

(*g*) Any other condition, the fulfilment of which would, in the opinion of the RBI, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

(4) Inspection of the books & other conditions for foreign banking company: Before granting any license to a company incorporated outside India, the RBI may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified clause (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.

30. What are the circumstances under which RBI may cancel the license granted to a banking company regulated under the Banking Regulation Act, 1949? [Dec. 2019 (3 Marks)], [Dec. 2022 (3 Marks)]

Ans.: Cancellation of license: As per Section 22(*4*) of the RBI Act, 1937, in following cases the RBI may cancel a licence granted to a banking company –

(*a*) If the company ceases to carry on banking business in India.

(*b*) If the company at any time fails to comply with any of the conditions imposed upon it under section 22(*1*).

(*c*) If at any time, any of the conditions referred to Section 22(3) or Section 22(*3A*) is not fulfilled.

Opportunity of fulfilling conditions: Before cancelling a licence on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions, the RBI, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

Appeal against cancellation of license: Any banking company aggrieved by the decision of the RBI cancelling a licence, within **30 days** from the date on which such decision is communicated to it, appeal to the Central Government.

The decision of the Central Government where an appeal has been preferred to it or of the RBI where no such appeal has been preferred shall be final.

INSURANCE BUSINESS

31. For which classes of insurance business requisition for registration application may be made as per the IRDAI (Registration of Indian Insurance Companies) Regulations?

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Ans.: The classes of business of insurance for which requisition for registration application may be made are:

(*i*) Life insurance business

(*ii*) General insurance business

(*iii*) Health insurance business exclusively

(*iv*) Reinsurance business.

An applicant shall make a requisition for registration application either for Life Insurance Business or General Insurance Business or Health Insurance Business exclusively or Reinsurance Business.

32. ABC Ltd. is planning to enter into the business of insurance for which Board of Directors of the Company seeks your advice about the norms in respect of paid-up equity capital for carrying out the business of insurer. Advise them accordingly with reference to provisions of the Insurance Act, 1938 as amended by Insurance Regulatory and Development Act, 1999. Also state the items that are excluded in determining the amount of paid-up equity capital of an insurer under the said Act. [Dec. 2018 (3 Marks)]

Ans.: As per Section 6 of the Insurance Act, 1938 as amended by the Insurance Regulatory & Development Act, 1999, no insurer carrying on the business of life insurance, general insurance or re-insurance in India shall be registered unless it has –

(*i*) **In case of life insurance or general insurance:** A paid-up equity capital of ₹ **100 Crore**.

(*ii*) **In case of re-insurer:** A paid-up equity capital of ₹ **200 Crore**.

However, in determining the paid-up equity capital the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company shall be excluded.

33. List out the grounds under which the Insurance Regulatory and Development Authority of India (IRDAI) is compulsorily required to cancel the Certificate of Registration for Insurer/Insurance business. [June 2019 (3 Marks)]

Ans.: The Insurance Regulatory & Development Authority of India (IRDAI), in case of repeated defaults on the grounds for suspension of a certificate of registration, may impose a penalty in the form of cancellation of the certificate. As per Section 3(4) of the Insurance Act, 1938, the Authority is compulsorily required to cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be:

- If the insurer fails to comply with the provisions relating to deposits.
- If the insurer fails, at any time, to comply with the provisions relating to the excess of the value of his assets over the amount of his liabilities.
- If the insurer is in liquidation or is adjudged an insolvent.
- If the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer.

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- If the whole of the deposit made in respect of the insurance business has been returned to the insurer.
- If, in case of an insurer, the standing contract is cancelled or is suspended and continues to be suspended for a period of 6 months.
- If the Central Government of India so directs.
- If the insurer makes default in complying with, or acts in contravention of any requirement of the Act or of any rule or any regulation or order made or any direction issued thereunder.
- If the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law.
- If the insurer carries on any business other than insurance business or any prescribed business.
- If the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999.
- If the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 2013 or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalization) Act, 1972 or the Foreign Exchange Management Act, 1999.

34. A Company already engaged in the business of marine and fire insurance would like to take-up the business of life insurance. Discuss the possibility of taking on this business. Also briefly describe under what circumstances registration of Insurance Companies may be suspended.
[June 2021 (3 Marks)]

Ans.: No person can carry on Insurance business unless & until he has obtained a certificate from the Authority for a particular class of Insurance business.

A person can start Life Insurance, Marine Insurance, Fire Insurance, Health Insurance etc. But Life Insurance business cannot be combined with other type of Insurance business.

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

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

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INDUSTRIAL LICENSE

35. Which industries come under the purview of compulsory licensing as per New Industrial Policy, 2015? [Dec. 2018 (3 Marks)], [June 2022 (3 Marks)]

Ans.: The industries which come under the purview of compulsory licensing are as follow:

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

36. Write a short note on: Industrial Entrepreneurs Memorandum (IEM) [June 2019 (3 Marks)]

Ans.: Industrial Entrepreneurs Memorandum (IEM): The industrial policy reforms have reduced the industrial licensing requirements, removed restrictions on investment and expansion and facilitated easy access to foreign technology and foreign direct investment.

All industrial undertakings exempt from the requirements of industrial licensing, including existing units undertaking substantial expansion, are required to file information in the prescribed form for Industrial Entrepreneurs Memorandum (IEM) with the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy and Promotion (DIPP), Government of India, and obtain an acknowledgement. No further approval is required.

All Industrial undertakings also need to file information in 'Part B' of the Memorandum at the time of commencement of commercial production.

Eligibility for getting IEM: All industrial undertakings exempted from the requirements of industrial licensing under I (D&R) Act, 1951 and having an investment of ₹ 10 Crore or above in the 'manufacturing sector' and ₹ 5 Crore or above in the 'services sector', including Existing Units, New undertaking (NU) and New Article (NA), are required to file an IEM in the prescribed format 'Part A'.

Cases requiring IEM/Letter of Intent (LOI): The promoter can file IEM in following categories:

- To set up a new industrial undertaking,
- To effect substantial expansion of the industrial undertaking,
- To manufacture a new article
- To carry on business of existing SSI units after graduating into large scale industry.

Procedure for filling of IEM: The promoter has to make an application to Government of India in prescribed format along with Demand Draft of ₹ 1000 in the name of Secretariat for Industrial Assistance (SIA), New Delhi with **6 copies.**

Steps Post-Filling IEM: After filling IEM to Govt. of India, Govt. of India gives acknowledgement receipt to the applicant and informs the Directorate of Industries. After receipt of acknowledgement, applicant can take further initiatives step to set up the unit.

Role of Directorate of Industries: Secretariat for Industrial Assistance (SIA), New Delhi circulates office memorandum enclosing one copy of application for the necessary comments from Directorate of Industries. The Directorate of Industries offers the comments to the GOI in respect of location after getting appropriate documents/certificate from the promoters. Those industrial promoters who have obtained IEM and gone into commercial production or implemented the project have to submit PART B with Government of India or Directorate of Industries with 7 copies for the record.

TELECOMMUNICATION

37. TRAI's mission is to create and nurture conditions for growth of telecommunications in the country. Explain.

Ans.: In India, the telecom market and business thereunder are governed and regulated by the Telecom Regulatory Authority of India (TRAI), which is a statutory body set up for regulating the Telecom and Broadcasting Sectors.

The entry of private service providers brought with it the inevitable need for independent regulation. The Telecom Regulatory Authority of India (TRAI) was, thus, established with effect from 20th February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997, to regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government.

TRAI's mission is to create and nurture conditions for growth of telecommunications in the country in a manner and at a pace which will enable India to play a leading role in emerging global information society.

One of the main objectives of TRAI is to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.

In pursuance of above objective TRAI has issued from time to time a large number of regulations, orders and directives to deal with issues coming before it and provided the required direction to the evolution of Indian telecom market from a Government owned monopoly to a multi operator multi service open competitive market.

The directions, orders and regulations issued cover a wide range of subjects including tariff, interconnection and quality of service as well as governance of the Authority.

The TRAI Act was amended by an ordinance, effective from 24 January 2000, establishing a Telecommunications Dispute Settlement & Appellate Tribunal (TDSAT) to take over the adjudicatory and disputes functions from TRAI. TDSAT was set up to adjudicate any dispute between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and to hear and dispose of appeals against any direction, decision or order of TRAI.

38. Which type of service providers requires OSP registration in India?

Aravind has recently completed Telecommunications engineering and he is keen in starting his own venture for Telecommunication support services. He has heard about OSP License and approached you to get more information on it. Brief him, on the purpose, authority authorized to issue such license, documents necessary for making application and compliance after registration. [Dec. 2019 (5 Marks)]

Ans.: OSP Registration in India: As per the **New Telecom Policy (NTP) 1999**, service providers in India involved in providing services like tele-banking, tele-medicine, tele-education, tele-trading, e-commerce, call center, network operation center and other IT Enabled Services, using telecom resources are termed as "Other Service Providers" (OSP).

These Other Service Providers or OSP's are required to obtain an OSP Registration from the Department of Telecommunication (DOT).

OSP Registration Applicability: Service providers in India involved in providing services like tele-banking, tele-medicine, tele-education, teletrading, e-commerce, call center, network operation center and other IT Enabled Services, using telecom resources are required to obtain OSP Registration. Telecom Resources are telecom facilities used by an OSP including, but not limited to Public Switched Telecom Network, Public Land Mobile Network, Integrated Services Digital Network (ISDN) and/or the telecom bandwidth provided by authorized telecom service provider.

OSP Registration Requirement: To obtain an OSP Registration in India, it is mandatory for the entity to be a Private Limited Company. Therefore, Entrepreneurs having plans for starting a call center or BPO or e-commerce or other IT Enabled Services must incorporate a Private Limited Company. The following are the documents necessary for OSP Registration in addition to the application in the prescribed format:

- Certificate of Incorporation of Private Limited Company
- Memorandum of Association (MOA) and Articles of Association (AOA)
- Board of Resolution or Power of Attorney authorizing the authorized signatory
- Name of Business and Activities Proposed
- List of Directors
- Present Shareholding

The above documents must be certified with seal by a Company Secretary or Director of the Company or Statutory Auditor or Public Notary.

The compliances after registration are:

(*a*) OSPs are required to submit an "Annual Return" to the DOT mentioning the activities undertaken and the present status of the OSP. The annual return for OSP License renewal must be submitted within 6 months of completion of financial year.

(*b*) Maintaining compliance with the terms and conditions prescribed by the DOT for OSP.

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PART II

INDUSTRIAL & LABOUR LAWS (40 MARKS)

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14 CONSTITUTION AND LABOUR LAWS

1. Industrial Laws are socio-economic justice oriented. Comment.

Ans.:

- The concept of social justice is so innate and demonstrated in the industrial laws of our country.
- Its proclaimed in the Preamble and the Directive Principles of State Policy, the industrial jurisprudence of the country is founded on the basic idea of socio-economic equality and its aim is to assist the removal of socioeconomic disparities and inequalities.
- The laws particularly the industrial laws of the country revolve on this basic philosophy of the Constitution.
- The concept of social justice is though not limited to any particular branch of legislation although it is more prominent and conspicuous in industrial laws and relations.
- Its scope is comprehensive and is founded to the basic ideals of social economic equality and it aims at assisting the removal of social economic disparities and inequalities of birth and the competing claims especially between the employers and workers by finding a just, fair and equitable solution to their human relation problem, so that peace, harmony and collection of the highest order prevails among them which may further the growth and progress of nations.

2. Can a Trade Union move the High Court under Article 226 to redress the fundamental rights of its members?

Ans.: The issue that – "weather Trade Union can move before the High Court under **Article 226** to redress the fundamental rights of its members" was discussed by the Rajasthan High Court in *Jaipur Division Irrigation Employees Union* v. *State of Rajasthan & Others*. Here a large number of the employees of the irrigation department were declared surplus. The Union challenged it in this writ petition. The Single Bench held that the petition is not maintainable holding that the fundamental rights of the individual are not the rights of the Union.

On appeal, the Division Bench reversed it and sent back to the Single Bench for disposal of the writ petition in accordance with the merits of the case.

The traditional concept of *locus standi* underwent sweeping changes in the modern age of public action and public interest litigation. In famous case of *S.P. Gupta & Others* v. *President of India & Others* the question of *locus standi* was discussed and it was held that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right

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or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantageous position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 of the Constitution of India or in the Supreme Court under Article 32 of the Constitution of India seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

Locus standi = the right or ability to bring a legal action to a court of law.

3. Write a short note on: Right to form Association & Union

Ans.: Freedom of Association [Article 19(1)(c)]: Right to form associations or unions is also guaranteed so that people are free to have the members entertaining similar views.

This right is subject to reasonable restriction which the State may impose in the interests of:

- Sovereignty and integrity of India
- Public order
- Morality

The right of association pre-supposes organization as an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.

4. Discuss the right against exploitation as contained in Article 23 of the Constitution of India with reference to decided case laws.

Ans.: Right against exploitation [Article 23]:

- Traffic in human beings and *begar* and other similar forms of forced labour are prohibited.
- Any contravention of this provision shall be an offence punishable in accordance with law.
- 'Begar' means compulsory work without any payment. Begar is labour or service which a person is forced to give without receiving any remuneration for it.
- 'Traffic' in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose off them
- Thus, the traditional system of beggary particularly in villages, becomes unconstitutional and a person who is asked to do any labour without payment or even a labourer with payment against his desire can complain against the violation of this fundamental right.

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- The State can impose compulsory service for public purposes such as conscription for defence or social service etc. While imposing such compulsory service the State cannot make any discrimination on grounds only of religion, race, caste or class or any of them.

Judicial views on Right against exploitation:

- Withholding of pay of a government employee as a punishment has been held to be invalid in view of Article 23 which prohibits begar. To ask a man to work and then not to pay him any salary or wages savours of begar. It is a Fundamental Right of a citizen of India not to be compelled to work without wages. [*Suraj* v. *State of Madhya Pradesh*]
- When a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words 'forced labour' under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction under Article 226 or Article 32 for the enforcement of fundamental rights which include the payment of minimum wages. [*Sanjit Roy* v. *State of Rajasthan*]

5. Discuss briefly Constitutional provisions relating to employment of child below 14 years of age.

Ans.: Prohibition of employment of children factories etc. [Article 24]:

- No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- Article 39(*e*) imposes an obligation upon the State to ensure that the health and strength of the workers, men and women and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age, strength etc. Accordingly, keeping in view provision of Article 24 read with Article 39(*e*) following laws have been enacted or amended suitability:
  - Child & Adolescent Labour (Prohibition & Regulations) Act, 1986
  - Children (Pledging of Labour) Act, 1933
  - Factories Act, 1948
  - Mines Act, 1952
  - Apprentice Act, 1961.

Judicial views on prohibition of employment of children:

- The Supreme Court observed that though the Employment of Children Act, 1938 did not include the construction work because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Article 24 children under age of 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Article 24 is enforceable even in the absence of implementing legislation. [*Peoples Union for Democratic Rights* v. *Union of India* (*also known as the Asiad Workers case*)]

- The Supreme Court directed that the employers of children below 14 years must comply with the provisions of the Child & Adolescent Labour (Prohibition & Regulations) Act, 1986 providing for compensation, employment of their parents/guardians and their education. [*M.C. Mehta* v. *State of T.N.*]

6. Equal Pay for Equal Work though not a fundamental right is certainly a constitutional goal. Explain.

Ans.: As per Article 39(*d*), the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women.

Article 39(*d*) being Directive Principles of State Policy is guideline for the framing of laws by the government. Such provision is not enforceable by the Courts, but the principles on which it is based is fundamental guidelines for governance that the State is expected to apply in framing and passing laws.

In the case of *Randhir Singh* v. *Union of India*, the Supreme Court has held that the principle of equal pay for equal work though not a fundamental right is certainly a constitutional goal. Article 39(*d*) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work.

However, the doctrine of 'equal pay for equal work' cannot be put in a strait jacket. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and as regards reliability and responsibility.

7. Write a short note on 'Living Wages' as covered under Article 43 of the Constitution of India.

Ans.: Article 43 requires the State to endeavour to secure, by suitable legislation, or economic organization, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. In particular, the State is to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43 imposes an obligation towards ensuring the provision of a 'Living Wage' in all sectors as well as acceptable conditions of work. This provision enunciates the revolutionary doctrine that employees are entitled as of right to certain reliefs.

A 'Living Wage' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. A 'minimum wage', on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. Fixation of minimum wage is in public interest and does not impose an unreasonable restriction on the right to carry on a right guaranteed by Article 19(*1*)(*g*). [*Edward Mills Co.* v. *Ajmer*]

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15 CHAPTER
EVALUATION OF LABOUR LEGISLATION & NEED OF LABOUR CODE

1. Write a short note on International Labour Organization (ILO)

Ans.:

- **International Labour Organization:** International Labour Organization (ILO) is one of the first organizations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I.
- **Whitley 4 Commission:** Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I. In Great Britain, the Whitley 4 Commission, a sub-committee of the Reconstruction Commission, recommended in its July 1918 Final Report that 'Industrial Councils' be established throughout the world.
- **India as founder member of ILO:** India is the founder member of International Labour Organization (ILO) and has been actively contributing to evolution of global policy on labour welfare.
- **Year of existence:** International Labour Organization which came into existence in **1919** and India has been a permanent member of the ILO Governing Body since 1922.
- **No. of members of ILO:** At present the ILO has 187 Members.
- **Tripartite character of ILO:** A unique feature of the ILO is its tripartite character. At every level in the organization, Governments are associated with the two other social partners, namely, the workers and employers.

2. What is the need and objective of bringing in new Labour Codes?

Or

What prompted the Government to bring in new labour legislations?

Ans.: Labour is covered under the Concurrent List of the Constitution. Therefore, rules governing labour can be passed by both the Parliament and State Legislatures. The resolution of labour disputes, working conditions, social security, and pay are only a few of the labour related issues that are governed by more than 100 State and 40 Federal Laws, according to the central government. Labour Reforms also remained untouched during the economic reforms carried out in 1991.

The Second National Commission of Labour had submitted its report in 2002 which said that there was multiplicity of Labour Laws in India and therefore, recommended that at the Central level multiple Labour Laws should be codified in 4 or 5 Labour Codes namely (*a*) Industrial relations; (*b*) Wages; (*c*) Social security; (*d*) Safety; and

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(e) Welfare and working conditions. While discussions were held on it, however, no serious initiative was taken in this direction during the time period from 2004 to 2014.

In order to codify 29 central legislations, the Ministry of Labour and Employment submitted four labour code bills in 2019. While the Code on Wages, 2019, was approved by Parliament, the Standing Committee on Labour was tasked with handling the three other bills. On all three Bills, the Standing Committee delivered its reports.

In September 2020, the government repealed these Bills and enacted new ones. They broadly categorized labour codes into 4 different categories –

1. Code on Wages
2. Industrial Relations Code
3. Social Security Code
4. Occupational Safety, Health & Working Conditions Code.

3. Enumerate the features of new Labour Codes.

Ans.: Various features and purposes of enacting new Labour Codes are given below:

(1) **To make applicability based on size of business:** Most labour rules are applicable to businesses larger than a particular size (typically employing 10 or above workers). Thresholds based on company size could ease the burden of compliance for businesses. One would counter that all businesses should be subject to fundamental protections including pay, social security, and working conditions. Such size-based limits are still present in some codes.

(2) **To simplify processes relating to registration & returns:** Simple and accountable system will simplify the processes. One Registration one License, single return for all the Codes.

(3) **Government approval:** Government approval is required for establishments that employ 100 or more employees to close, lay-off, or retrench. It has been suggested that this has made it harder for businesses to leave and has interfered with their capacity to change their staff to meet production demands. This number is increased to 300 by the Industrial Relations Code, and the government is permitted to raise it further by notification.

(4) **To reduce burden of compliances:** The complexity of labour laws has led to many compliances, which has increased the burden of compliance on businesses. On the other side, the labour enforcement apparatus has been unsuccessful due to weak enforcement, insufficient sanctions, and inspectors' rent-seeking behaviour. Some of these issues are covered by the Codes.

(5) **To address issues relating to contract labour:** Contract labour is now used more frequently as a result of economic factors and labour compliance requirements. However, fundamental rights like guaranteed salaries have been denied to contract workers. These issues are not entirely addressed by the Codes. Fixed-term employment, however, is a new type of short-term labour that is introduced by the Industrial Relations Code.

(6) **To give bargain powers to trade unions:** There are many registered trade unions, but there are no standards by which to "recognize" unions that can formally bargain with employers. Provisions for recognition are created by the Industrial Relations Code.

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(7) **To simplify labour rules:** The Codes greatly simplify labour rules, yet there are several areas where they fall short. Additionally, the Code on Social Security has enabling measures to notify programmes for "gig" and "platform" workers; nonetheless, these classifications lack precision.

(8) **To delegate rule making authority:** The Codes delegate rule-making authority over a number of significant issues, including the applicability of social security programmes and health and safety regulations. The debate is on whether the legislature or the executive branch should decide these issues.

(9) **To forbid discrimination based on gender:** The law forbids discrimination based on gender when it comes to hiring new employees for similar or identical jobs and determining pay. Work of a similar kind is defined as work requiring the same level of expertise, effort, responsibility, and experience.

(10) **To establish Advisory Boards:** The Advisory Boards will be made up of the federal and State Governments. Employers, employees (equal in number to employers), independent individuals, and five State Government representatives make up the Central Advisory Board. State Advisory Boards will be made up of independent individuals, employers, and workers. Women will make up one-third of both the central and state boards' overall membership. The Boards will give their respective governments advice on matters such as (*i*) setting minimum wages and (*ii*) expanding possibilities for women in the workforce.

(11) **To provide penalties:** The Code outlines punishments for offences committed by an employer, such as (*i*) underpaying required wages or (*ii*) violating any Code requirement. The maximum punishment is 3 months in prison and a fine of up to ₹ 1 lakh. Penalties vary based on the type of offence.

4. Name the Acts that will be subsumed under the Code on Wages.

Ans.: Following Acts will be subsumed under the Code on Wages:

- Payment of Wages Act, 1936
- Minimum Wages Act, 1948
- Payment of Bonus Act, 1965
- Equal Remuneration Act, 1976.

5. Name the Acts that will be subsumed under the Code on Social Security.

Ans.: Following Acts will be subsumed under the Code on Social Security:

- Employees Provident Funds & Miscellaneous Provisions Act, 1952 [EPF Act]
- Employees State Insurance Act, 1948 [ESI Act]
- Employees Compensation Act, 1923
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- Maternity Benefit Act, 1961
- Payment of Gratuity Act, 1972
- Cine-workers Welfare Fund Act, 1981

- Building & Other Construction Workers Welfare Cess Act, 1996
- Unorganized Workers Social Security Act, 2008.

6. State any eight features of the Code on Social Security.

Ans.: Objects: Objects of the Code on Social Security is to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized or unorganized or any other sectors or for matters connected therewith or incidental thereto. To ensure security for all workers, the Central Government has amalgamated 9 Labour Laws into the Social Security Code in order to secure the right of workers for insurance, pension, gratuity, maternity benefit etc.

Salient Features: Salient features of the Code on Social Security, *inter alia*, are:

- Benefit of pension scheme (EPFO) to all workers of organized, unorganized and self-employed sectors.
- Creation of social security fund for providing comprehensive social security to the unorganized sector.
- Through a small contribution, benefit of free treatment is available under hospitals and dispensaries of ESIC. The doors of ESIC will now be opened for the workers of all sectors along with the workers of the unorganized sector.
- Expansion of ESIC hospitals, dispensaries and branches up to district level.
- To define various expressions used in the Code such as, "career centre", "aggregator", "gig worker", "platform worker", "wage ceiling", etc. Further, the definition of "employee" has been comprehensively elaborated to cover maximum number of employees and workers.
- Even if a single worker is engaged in hazardous work, he would be given ESIC benefit.
- Opportunity to join ESIC for platform and gig workers engaged in new technology.
- Plantation workers to get benefit of ESIC.
- Institutions working in hazardous area to be compulsorily registered with ESIC.
- Constitution of various social security organizations for the administration of the Code, namely, (*a*) the Central Board of Trustees of the Employees Provident Fund, (*b*) the Employees State Insurance Corporation, (*c*) the National Social Security Board for Unorganized Workers, (*d*) the State Unorganized Workers Social Security Board and (*e*) the State Building Workers Welfare Boards.
- Provisions for maternity benefits such as prohibition from work during certain periods, provision of nursing breaks, crèche facility, claim for maternity benefits, etc.
- To provide for appeal against an order passed by any authority in regard to determination and assessment of dues and levy of damages relating to Employees Provident Fund by an employer only

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Section 2(a)	**Adult** means a person who has completed his 18th year of age.
Section 2(b)	**Adolescent** means a person who has completed his 15th year of age but has not completed his 18th year.
Section 2(c)	**Child** means a person who has **not completed his** 15th **year** of age.
Section 2(d)	**Young person** means a person who is either a **child** or an **adolescent**.

3. What are the elements necessary to constitute a factory under the Factories Act, 1948? [June 2002 (5 Marks)]

Or

Srivastva is the owner of a unit manufacturing Beedi in Jabalpur. 22 persons are employed in the unit. Of these 22 employees, one is a graduate for supervising the work and another apprentice learning work. The remaining 20 are employed not on the time wage system, but on the piece work system. Is the unit, a factory within the meaning of the term under the Factories Act, 1948? [June 2019 (3 Marks)]

Ans.: Factory [Section 2(*m*)]: Factory includes any premises including the precincts where:

(*i*) **10 or more** workers are engaged and a manufacturing process is being carried on with the aid of power *or*

(*ii*) **20 or more** workers are engaged and a manufacturing process is being carried on without the aid of power.

Factory does not include:

- Mine under the Mines Act, 1952
- Mobile unit belonging to the armed forces of the Union
- Railway running shed
- Hotel, restaurant or eating place.

Explanation I: For computing the number of workers all the workers in different groups and relays in a day shall be taken into account.

Explanation II: The mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises shall not be construed to make it a factory if no manufacturing process is being carried on in such premises.

As per facts given in case, manufacturing unit of Srivastva fulfils the criteria in relation to 'number of workmen' and also the work is directly supervised by supervisor who is employee/workmen of Srivastav and hence his manufacturing unit is factory within the meaning of Section 2(m) of the Factories Act, 1948.

4. A licensed salt producer engaged workmen in open land in which work was done to convert sea water into crystals of salt. Whether the workmen working in open land are employed in the premises of the factory? [Dec. 2005 (3 Marks)]

Ans.: The legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an

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10 CHAPTER LAW OF WELFARE & WORKING CONDITION

UNIT I – FACTORIES ACT, 1948

OBJECTS & DEFINITIONS

1. Write a short note on: Objects of the Factories Act, 1948

Ans.: Objects of the Factories Act, 1948 are as follows:

(1) To ensure safety and to promote health & welfare of the workers employed in factories.

(2) To make provisions for working hours and other facilities that can be provided to workers.

(3) To makes provisions regarding employment of women and young persons.

(4) To protect workers employed in factories against industrial and occupational hazards.

(5) To makes provisions for annual leave with wages.

Judicial Views:

- The Factories Act, 1948 is a social legislation and it provides for the health, safety, welfare and other aspects of the workers in the factories. In short, the Act is meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises. [*Ravi Shankar Sharma* v. *State of Rajasthan*]
- The Factories Act, 1948 has been enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose, it seeks to impose upon the owner or the occupier certain obligations to protect the workers and to secure for them employment in conditions conducive to their health and safety. [*Bhikusa Yamasa Kshatriya (P) Ltd.* v. *UOI*]

2. Define following terms under the Factories Act, 1948

- **Adult**
- **Adolescent**
- **Child**
- **Young person**

Distinguish between: Young person' & 'adult' under the Factories Act, 1948. [June 2009 (5 Marks)]

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crystals of salt, come within the meaning of the word 'premises'. Hence, workmen working in open land are treated to be employed in the premises of the factory under Section 2(*m*) of the Factories Act, 1948.

5. Define 'Manufacturing Process' under the Factories Act, 1948.
[Dec. 2008 (5 Marks)]

Ans.: Manufacturing Process [Section 2(*k*)]: Manufacturing process means any process for –

(*i*) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal.

(*ii*) Pumping oil, water or sewage or any other substance.

(*iii*) Generating, transforming, transmitting power.

(*iv*) Composing types for printing, printing by letter press, lithography, photogravure or other similar process, or book-binding.

(*v*) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels.

(*vi*) Preserving or storing any article in cold storage.

6. Would you treat the following as manufacturing process under the Factories Act, 1948?
(*i*) Beedi making
(*ii*) A process employed for pumping water
(*iii*) Composing types for printing [Dec. 1998 (3 Marks)]

Ans.: Considering the definition of term 'Manufacturing Process' as given in Section 2(*k*) of the Factories Act, 1948, answer to given case is as follows:

(*i*) Any process for making article or substance with a view to its use, sale, transport, delivery or disposal is manufacturing process. Thus, making of bidies is manufacturing process.

(*ii*) Any process for pumping water is manufacturing process. Thus, use of electric motor for the purpose of lifting or pumping water was held to be manufacturing process.

(*iii*) Composing types for printing is specifically included in Section 2(*k*) of the Factories Act, 1948 and hence it amounts to manufacturing process.

7. Sun-cured tobacco leaves are subjected to process of moistening, striping, breaking up, adapting, packing etc. with a view to transporting them company's main factory for their use in manufacturing cigarettes. Does it amount to manufacturing process under the Factories Act, 1948?
[June 2003 (5 Marks)]

Ans.: As per Section 2(*k*) of the Factories Act, 1948, any process for making article or substance with a view to its use, sale, transport, delivery or disposal is manufacturing process. Thus, sun-cured tobacco leaves subjected to processes of moistening,

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main factory for their use in manufacturing cigarette amounts to 'manufacturing process' within the meaning of Section 2(*k*) of the Factories Act, 1948.

8. A small scale establishment uses materials, like sleepers, bolts, nuts, *etc.*, for supply to the railway department for laying tracks. Is the establishment carrying on 'manufacturing process'? [Dec. 2006 (3 Marks)]

Ans.: As per Section 2(*k*) of the Factories Act, 1948, any process for making article or substance with a view to its use, sale, transport, delivery or disposal is manufacturing process.

Thus, construction of railway – use of raw materials like sleepers, bolts, loose rails etc. to adaptation of their use for ultimately for laying down railway line amounts to 'manufacturing process' within the meaning of Section 2(*k*) of the Factories Act, 1948.

9. Ghee brought from various customers is sampled chemically, analyzed and packed in tins for transportation to the head office of the company for sale in the market. Does it amount to manufacturing process under the Factories Act, 1948? [June 2009 (3 Marks)]

Ans.: As per Section 2(*k*) of the Factories Act, 1948, any process for making article or substance with a view to its use, sale, transport, delivery or disposal is manufacturing process.

Thus, collection of ghee from different sources and then heating and pouring into tins which were sealed amounts to 'manufacturing process' within the meaning of Section 2(*k*) of the Factories Act, 1948.

10. Define 'Worker' under the Factories Act, 1948.

Or

Designers Ltd. is engaged in fabrication work of window grills with the aid of power and has employed 19 workers. Recently, it appointed two gardeners for gardening in its factory premises. Is the company liable to extend the benefits to the gardeners as applicable to other factory workers? [Dec. 2009 (4 Marks)]

Ans.: Worker [Section 2(*l*)]: Worker means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind or work incidental to, or connected with, the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

All persons employed in or in connection with a factory whether or not employed as 'workers' are entitled to the benefits of the Factories Act, 1948. Hence, two gardeners for gardening in its factory premises are employed in or in connection with a factory and are entitled to the benefits as applicable to other factory workers.

11. The workers were engaged by beedi manufacturer for rolling beedies at home subject to the rejection of defective beedies by manufacturer. The workers claimed that they should be treated as 'workers' under the provisions of the Factories Act, 1948. Will they succeed? [June 2010 (4 Marks)]

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A beedi roller, who is to produce beedies rolled in a certain form and is not controlled by the management is not a worker.

The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. Since as per the facts given in case, the employer did not retain direction and control over the workers both in manner of the nature of the work as also its details they are not workers within the meaning of Section 2(*l*) of the Factories Act, 1948.

OCCUPIER

12. Define 'Occupier' under the Factories Act, 1948 [Dec. 2004 (5 Marks)], [June 2009 (5 Marks)]

Or

'Occupier' in the case of a company under the Factories Act, 1948, Discuss. [Dec. 2002 (5 Marks)]

Ans.: Occupier [Section 2(*n*)]: Occupier means the person who has **ultimate control** over the affairs of the factory.

Deemed Occupier: Following persons are deemed to be occupier:

Firm or other association of individuals	Any individual partner or member
A company	Any director
Factory owned or controlled by the Central or State Government or Local Authority	The person or persons appointed to manage the affairs of the factory

Occupier in case of ship: In the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, following persons are deemed to be occupier:

- The owner of the dock for the purposes of any matter provided for by dry dock.
- The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work.

13. The Board of directors of a company appointed its Deputy General Manager, who controlled the operational activities of the factory, as its 'Occupier'. The Chief Inspector of Factories (CIOF) did not approve the appointment. Can the company succeed against the CIOF for having refused to accept its senior functionary's appointment as the 'Occupier'? [June 2006 (3 Marks)]

Ans.: As per Section 2(*n*) of the Factories Act, 1948, occupier means the person who has ultimate control over the affairs of the factory. In case of company, directors shall be deemed to be occupier.

Only a member of Board of Directors of the company can be occupier of the factory of the company. The ultimate control of factory owned by company vests in Board of Directors.

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Ultimate control which vests in Board of Directors cannot be vested in any one else. Company owing factory cannot nominate its employees or officers except Director of the company as occupier of its factory. Therefore, an employee of company or factory cannot be occupier under Section 2(*n*) of the Factories Act, 1948.

14. Write a short note on: Notice by Occupier

Ans.: Notice by Occupier [Section 7]: An occupier of a factory is required to send a written notice, containing prescribed particulars, to the Chief Inspector at least 15 days before an occupier begins to occupy or use a premises as a factory and at least 30 days before the date of resumption of work in case of seasonal factories, *i.e.* factories working for less than 180 days in a year.

Notice where new manager is appointed: Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within **7 days** from the date on which such person takes over charge.

When there is no manager/occupier deemed as manager: During a period for which no person has been designated as Manager of a factory or during which the person designated does not manage the factory any person found acting as manager, will be the manager for the purposes of the Act. Where no such person is found the occupier should be deemed to be the manager of the factory.

15. Write a short note on: General duties of the Occupier
[Dec. 1994 (5 Marks)], [June 2007 (5 Marks)]

Or

Who is an occupier? What are his general duties? [June 1998 (7 Marks)]

Ans.: Occupier: *Please refer to answer of Question No. 12.*

General duties of the occupier [Section 7A]: General duties of the Occupier are as under:

- To ensure the health, safety and welfare of all workers.
- To make provision and maintenance in the factory that are safe and without risks to health.
- To make arrangement for ensuring safety and absence of risks to health for the use, handling, storage and transport of articles and substances.
- To make provisions of information, instruction, training and supervision necessary to ensure the health and safety.
- To maintain all places of work in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and egress from, such places as are safe and without such risks.
- To maintain or monitor of working environment that is safe, without risks to health and arrangements for workers welfare at work.
- Every occupier shall prepare general policy with respect to the health and safety of the workers.

Policy with respect to health & safety and its revision: Every occupier shall prepare revise, a written statement of his general policy with respect to the health and safety and bring any revision thereof to the notice of all the workers in prescribed manner.

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Ans.: General duties of Manufactures [Section 7B]: Every person who designs, manufacture, imports or supplies any article (including plant & machinery) or use in any factory shall observe the following:

(*a*) To ensure that the article designed and constructed as to be safe and without risks to the health of the workers when properly used.

(*b*) To carry out tests and examination for the effective implementation of the clause (*a*).

(*c*) To take steps to ensure that adequate information will be available in connection with the

- Use of the article in any factory
- About the use for which it is designed and tested and
- About any condition necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers.

Duties for imported articles: Where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see that:

(*a*) The article (including plant and machinery) conforms to the same standards if such article is manufactured in India.

(*b*) If the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India that the article conforms to such standards.

The concerned person may carry out or arrange to carry out research with a view to the discovery and the elimination or minimization of any risk to the health or safety of workers.

If research, testing, etc. has already been exercised or carried out, then no such research is required again.

However, the person may get relief from the exercise of above duties if he gets an undertaking in writing by the user of such article to take necessary steps that the article will be safe and without risk to the health of the workers.

LICENSING & REGISTRATIONS OF FACTORIES

17. State the provisions of Factories Act, 1948 relating to approval, registration and licensing of factories. [Dec. 1996 (5 Marks)]

Ans.: Approval, licensing & registration of factories [Section 6]: The State Government can make rules with regard to licensing and registration of factories on following matters:

- Submission of plans to the Chief Inspector or the State Government
- Obtaining previous permission for the site on which factory is to be situated and for construction or extension of any factory.
- Considering applications for permission of plans and specifications

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- Approval of plans and specifications and the authority certifying them
- Registration and licensing of factories
- Fees payable for registration, licensing and for the renewal of licenses
- License not to be granted or renewed unless notice specified under Section 7 has been given.

Automatic Approval: If an application is made for the approval of site for construction or extension of the factory and required plans and specifications have been submitted by registered post to the Chief Inspector or State Government and if no reply is received within **3 months** from the date on which it is sent the application stands automatically approved.

Appeal against refusal to grant permission: If no permission granted to the site, construction or extension of a factory, or to the registration and licensing of a factory, the applicant may within **30 days** of the date of such refusal appeal to:

(*i*) The Central Government against the order of the State Government.

(*ii*) The State Government against the order of any other authority.

STATUTORY AGENCIES

18. Discuss the powers of Inspectors under the Factories Act, 1948. [June 1993 (8 Marks)]

Ans.: Powers of Inspectors [Section 9]: An Inspector appointed under the Factories Act, 1948 may exercise the following powers:

(*a*) **Power to enter in factory:** Inspector can enter, with such assistants, being persons in the service of the government, or any local or other public authority, or with an expert as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory.

(*b*) **Power to examine:** Inspector can make examination of the premises, plant, machinery, article or substance.

(*c*) **Power to make inquiry:** Inspector may inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry.

(*d*) **Power to require production of documents:** Inspector may require the production of any prescribed register or any other document relating to the factory.

(*e*) **Power to seize:** Inspector can seize, or take copies of, any register, record or other document or any portion thereof as he may consider necessary in respect of any offence under the Act, which he has reason to believe, has been committed.

(*f*) **Power to give directions:** Inspector can direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed for so long as is necessary for the purpose of any examination under clause (*b*).

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graphs and make such recordings as he considers necessary for the purpose of any examination, taking with him any necessary instrument or equipment.

(*h*) **Power to order for removal of dangerous substance:** In case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test but not so as to damage or destroy it of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination.

(*i*) **Other prescribed powers:** Inspector can exercise such other powers as may be prescribed.

It is provided that no person shall be compelled to answer any question or give any evidence tending to incriminate himself.

19. Discuss briefly the role the statutory agencies created under the Factories Act, 1948 in the enforcement of its provisions. [June 1997 (8 Marks)]

Or

What are the duties of Certifying Surgeon under the Factories Act, 1948? [June 1993 (7 Marks)]

Ans.: The State Governments carry out the administration of the Factories Act, 1948 through Inspecting Staff, Certifying Surgeons, Welfare Officers, Safety Officers and provisions relating to them are discussed below:

(1) **Inspectors [Section 8]:** The State Government has been given power to appoint Chief/Additional/Joint/Deputy Inspectors by issuing a notification in the Official Gazette. Every District Magistrate shall be an Inspector for his district.

The State Government may appoint certain Public Officers, to be the Additional Inspectors for certain areas assigned to them. Assignment of local area to an inspector is within the discretion of the State Government.

A Chief Inspector is appointed for the whole State. He shall in addition to the powers conferred as a Chief Inspector can exercise the powers of an Inspector throughout the State. Therefore, if a Chief Inspector files a complaint, the Court can legally take cognizance of an offence.

(2) **Certifying Surgeons [Section 10]:** The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of the Act. A certifying surgeon may authorize any qualified medical practitioner to exercise any of his powers for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose.

No person shall be appointed or authorized to exercise the powers of a certifying surgeon, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employment of the factory.

The Certifying Surgeons are appointed to perform duties as given below:

(*a*) Examination and certification of young persons.

(*b*) Examination of persons engaged in dangerous occupations or processes in factories.

(*c*) Exercising of medical supervision for factories where –

(*i*) Cases of illness which s reasonable to believe are due to the nature of the manufacturing process or other conditions of work.

(*ii*) There is a likelihood of injury to the health of workers due to –

- Change in the manufacturing process.
- Change in the substances used in manufacturing process.
- Adoption of any new manufacturing process
- Any use of any new substance in a manufacturing process.

(*iii*) Young persons are employed in any work which is likely to cause injury to their health.

(3) **Welfare Officer [Section 49]:** It imposes statutory obligation upon the occupier of the factory of the appointment of Welfare Officer where **500 or more workers** are ordinarily employed. Duties, qualifications and conditions of service may be prescribed by the State Government.

(4) **Safety Officer [Section 40B]:** The State Government can direct occupier of factory to employ such number of Safety Officers where **more than 1,000 workers** are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein. The duties, qualifications and working conditions may be prescribed by the State Government.

20. Navratna Public Sector Undertakings have factories throughout the country. These undertakings have an impeccable record of best welfare measures and working conditions. Do these undertakings still required to appoint Welfare Officers in their factories? [Dec. 2007 (3 Marks)]

Ans.: Section 49 of the Factories Act, 1948 imposes statutory obligation upon the occupier of the factory of the appointment of Welfare Officer where **500 or more workers** are ordinarily employed.

Navratna public sector undertaking will have to appoint welfare officers in their factories of the number of workers in the undertaking exceeds the prescribed workers. It will not be a deciding criteria that whether the undertaking have factories throughout the country or have an impeccable record of best welfare measures and working conditions.

HEALTH MEASURES

21. State the provisions relating to 'Cleanliness' under the Factories Act, 1948.

Ans.: Cleanliness [Section 11]: Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance. In this connection following provisions are to be observed:

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sweeping or by other effective method.

(*b*) **Cleaning of floor of workroom:** The floor of workroom shall be cleaned at least once in every week by washing, using disinfectant.

(*c*) **Drainage:** Where a floor is liable to become wet in the course of any manufacturing process effective means of drainage shall be provided and maintained.

(*d*) **Cleaning of walls, partitions & ceiling etc.:** All inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall -

(*i*) Where they are painted otherwise than with washable water-paint or varnished, be repainted or revarnished at least once in every period of **5 years**.

(*ii*) Where they are painted with washable water paint, be repainted with at least one coat of such paint at least once in every period of **3 years** and washed at least once in every period of 6 months.

(*iii*) Where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of **14 months** by prescribed method.

(*iv*) In any other case, be kept whitewashed or colour washed, and the whitewashing or colour-washing shall be carried out at least once in every period of **14 months**.

(*e*) **Painting or varnishing of doors and window frames:** All doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of **5 years**.

(*f*) **Register of cleanliness:** The dates on which the processes required by clause (*d*) are carried out shall be entered in the prescribed register.

22. State the provisions relating to 'Ventilation & temperature' under the Factories Act, 1948.

Ans.: Ventilation & temperature [Section 13]: Effective and suitable provision shall be made in every factory for securing and maintaining –

(*a*) Adequate ventilation by the circulation of fresh air.

(*b*) Such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health

Measures to reduce excessively high temperature: To prevent excessive heating of any workroom following measures shall be adopted:

(*i*) Walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable

(*ii*) Where the nature of the work carried on in the factory involves the production of excessively high temperatures, such adequate measures shall be taken to protect the workers by separating the process which produces such temperatures from the workroom, by insulating the hot parts.

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Power of Chief Inspector to issue directions: The Chief Inspector is empowered to direct any factory to adopt such methods which will reduce the excessively high temperature. In this regard, he can specify the measures which in his opinion should be adopted.

23. 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? [June 2023 (3 Marks)]

Ans.: There are certain manufacturing processes like chemical, textile or jute, *etc.*, which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process.

Dust and fume [Section 14]: Following measures should be adopted so that dust & fumes is controlled below permissible limits:

(1) Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes *etc.*, in the work-rooms.

(2) Wherever necessary, exhaust appliances 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 stationery internal combustion engine and exhaust should be connected into the open air.

(4) In cases of other internal combustion engine, effective measures should be taken to prevent the accumulation of fumes there from.

24. Jindal Ltd. has more than 35 workers during the previous year 2022-2023 in its factory located in industrial area of Kanpur at Uttar Pradesh. The company is in the process of reviewing the compliances under the Factories Act, 1948. Advice the company in the matter of complying with provisions of 'Health of Workers' under the Factories Act, 1948 in respect of the following:

(1) Overcrowding

(2) Drinking Water

(3) Latrines & Urinals

(4) Spittoons

Ans.: Every factory has to comply with the provisions relating to the 'health of the workers' contained in the Factories Act, 1948.

(1) Overcrowding [Section 16]: Overcrowding in the work-room not only affects the workers in their efficient discharge of duties but their health also. Thus, overcrowding should be avoided. Apart from this general prohibition, Section 16 lays down minimum working space for each worker as **14.2 cubic metres** of space per worker in every workroom. For calculating the work area, the space more than **4.2 metres** above the level of the floor, will not be taken into consideration.

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ments for sufficient supply of drinking water for all workers in the factory. Water should be wholesome, *i.e.* free from impurities. Water should be supplied at suitable points convenient for all workers. No such points should be situated within 6 metres of any washing place, urinals, latrine, spittoon, open drain carrying salvage or effluent or any other source of contamination, unless otherwise approved in writing by the Chief Inspector. In case where more than **250 workers** are ordinarily employed, effective arrangements should be made for **cooling drinking water** during hot weather.

(3) **Latrines & Urinals [Section 19]:** Every factory shall make suitable arrangement for the provision of latrines and urinals for the workers. These should be conveniently situated and accessible to all workers during working hours. Separate arrangement shall be made for male and female workers. A sweeper shall be employed whose exclusive job will be to keep clean all latrines and urinals.

(4) **Spittoons [Section 20]:** Every factory should have sufficient number of spittoons situated at convenient places. These should be maintained in a clean and hygienic condition. Whoever does not spit in spittoons shall be punishable with fine up to ₹ **5**.

25. State the provisions relating to 'latrines and urinals' under the Factories Act, 1948.

Ans.: Latrines & Urinals [Section 19]: Following provisions are made in this respect:

(1) Every factory shall make suitable arrangement for the provision of latrines and urinals for the workers.

(2) Every factory shall make provision for sufficient number of latrines and urinals of prescribed standard. These should be conveniently situated and accessible to all workers during working hours.

(3) Separate arrangement shall be made for male and female workers.

(4) All these places shall have suitable provisions for lighting and ventilation.

(5) No latrine or urinal shall communicate with any work-room unless in between them there is provision of open space or ventilated passage.

(6) All latrines and urinals shall be kept in clean and sanitary conditions at all times.

(7) A sweeper shall be employed whose exclusive job will be to keep clean all latrines and urinals.

(8) Where **more than 250 workers** are ordinarily employed in a factory, there shall be provided all latrine and urinal accommodation of prescribed sanitary types.

SAFETY MEASURES

26. What are the provisions of the Factories Act, 1948 regarding the fencing of machinery for the safety of workers? **[Dec. 2000 (5 Marks)]**

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Must Fencing of machinery [Section 21]: Machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction and shall be constantly maintained and kept in position, while the parts of machinery they are fencing are in motion or in use. Such types of machinery or their parts are:

(1) Every moving part of a prime mover and flywheel connected to a prime-mover. It is immaterial whether the prime mover or flywheel is in the engine house or not.

(2) Headrace and tailrace of water wheel and water turbine.

(3) Any part of stock-bar which projects beyond the head stock of a lathe.

(4) Every part of an electric generator, a motor or rotary converter or transmission machinery unless they are in the safe position.

(5) Every dangerous part of any other machinery unless they are in safe position.

27. Kishna has small factory wherein only six workers are employed and presently his factory is not covered under the provisions of the Factories Act, 1948. He is planning to start a big factory where more than twenty five workers are likely to be employed. Kishna is not aware of the 'Safety Measures' provisions under the Factories Act, 1948. Advice him on following matters in complying with the provisions of the Factories Act, 1948:

(1) Fencing of machinery

(2) Work on or near machinery in motion

(3) Employment of young person on dangerous machines

(4) Striking gear and devices for cutting off power

(5) Self-acting machines

Ans.: Every factory has to comply with the provisions relating to the 'Safety Measures' which are given below.

(1) **Fencing of machinery [Section 21]:** Machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction.

(2) **Work on or near machinery in motion [Section 22]:** Where in any factory it becomes necessary to examine any part of machinery while the machinery is in motion, such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing.

No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion.

(3) **Employment of young person on dangerous machines [Section 23]:** No young person shall be required or allowed to work at any machine, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed.

(4) **Striking gear and devices for cutting off power [Section 24]:** In every factory suitable striking gear or other efficient mechanical appliance shall be provided and maintained in proper condition. In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom.

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proper safety from the self-acting machines.

28. A factory owner was prosecuted for refusing to employ experienced women workers in his factory processing cotton through cotton openers. He pleaded bar of Section 27 of the Factories Act, 1948 in his defense. Will he succeed? Will it make any difference if the cotton openers are located in a separate for off portion of the factory? [Dec. 1994 (5 Marks)]

Ans.: Section 27 of the Factories Act, 1948 prohibits the employment woman near cotton opener. But if cotton openers are located separately at far off portions, the prohibition does not operate.

It provides that if the feed-end of a cotton opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of partition where the feed-end is situated.

However, the owner will succeed, if cotton openers are situated separately from the place of employment.

WELFARE MEASURES

29. State the provisions relating to 'washing facilities' under the Factories Act, 1948

Ans.: Washing facilities [Section 42]: Following are the provision relating to washing facilities:

- Every factory should provide and maintain adequate and suitable washing facilities for its workers.
- For the use of male and female, such facilities should be separate and adequately screened.
- Such facilities should be conveniently accessible for all workers and be kept in a state of cleanliness.
- The State Government is empowered to make rules prescribing standards of adequate and suitable washing facilities.

30. State the provisions relating to 'First aid appliances' under the Factories Act, 1948

Ans.: First aid appliances [Section 45]: In a factory following arrangements should be made in respect of first-aid facilities.

- Provision of at least one first aid box or cupboard, subject to following conditions, for every **150 workers** ordinarily employed at any one time in the factory.
- It should be equipped with prescribed contents and nothing else should be stored in it.
- It should be properly maintained and readily accessible during all working hours.

- A responsible person who holds a certificate in first aid treatment, recognised by the State Government should be made the in-charge.
- Such a person should be readily available during working hours of the factory.
- Where there are different shifts in the factory, a separate person may be appointed for each shift provided he is a responsible person and trained in first-aid treatment.
- Where more than **500 workers** are ordinarily employed in a factory, an ambulance room should be provided and maintained by every such factory.

31. State the provisions relating to 'Canteens' under the Factories Act, 1948

Ans.: Canteens [Section 46]: The State Government may make rules requiring that in any specified factory wherein more than **250 workers** are ordinarily employed, a canteen shall be provided and maintained by the occupier for the use of workers. Such rules may relate to any of the following matter:

- Date by which canteen shall be provided.
- Standards in respect of construction, accommodation, furniture and other equipment of the canteen.
- Foodstuffs to be served and the prices to be charged.
- Items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer.
- Constitution of a Managing Committee for the canteen and the representation of the workers in the management of the canteen.

32. State the provisions relating to 'shelters, rest rooms and lunch rooms' under the Factories Act, 1948.

Ans.: Shelters, rest rooms and lunch rooms [Section 47]: The provision of some sort of shelter is a must, where the workers can take their meals brought by them during rest interval. The following provisions have been made in this respect:

- In every factory where more than **150 workers** are ordinarily employed, the occupier should make adequate and suitable arrangements for shelters or rest rooms and lunch-room with provision of drinking water where the workers can take rest of or eat meals brought by them. Where a lunch room exists no worker shall eat any food in the workroom.
- Such places should be equipped with the facility of drinking water.
- Such places should be sufficiently lighted, ventilated and kept in cool and clean conditions.
- The construction and accommodation, furniture and equipment of such place should conform to the standards, if any, laid down by the State Government.

33. 45 workers of a canteen run by workers co-operative in an ordnance factory claimed that the factory manager should provide rest rooms for the workers required under section 47 of the Factories Act, 1948. The Manager refused. Comment. [Dec. 1994 (5 Marks)]

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Committee are not employees of the Managing Committee, but are employees of Occupier.

Thus, the workers working in the canteen shall be provided shelter, rest room as per Section 47 by the Occupier. The workers will succeed in this case.

34. State the provisions relating to 'Creches' under the Factories Act, 1948.

Ans.: Crèches [Section 48]: Following provisions have been made in respect of crèches in the factories:

- In every factory wherein more than 30 women workers are ordinarily employed, the facility of suitable room or rooms should be provided and maintained for the use of children under the age of 6 years of such women.
- There should be adequate accommodation in such rooms.
- These places should be sufficiently lighted and ventilated and kept in clean and sanitary conditions.
- Women trained in the case of children and infants should be made in charge of such rooms.

35. As a Practicing Company Secretary advice your client who is owner of factory employing more than 60 persons about the 'Welfare' provisions in respect of the following matters in complying the provisions of the Factories Act, 1948:

(a) Washing facilities

(b) Facilities for storing and drying of wet clothing

(c) Facilities for sitting

(d) First aid appliances

Ans.: Every factory has to comply with the provisions relating to the 'Welfare' which are given below.

(a) Washing facilities [Section 42]: In every factory adequate and suitable facilities for washing shall be provided and maintained for the use of the workers. Separate and adequately screened facilities shall be provided for the use of male and female workers.

(b) Facilities for storing and drying of wet clothing [Section 43]: Every factory should provide suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

(c) Facilities for sitting [Section 44]: Every factory shall provide and maintain suitable facilities for sitting, for those who work in standing position so that they may make use of them as an when any opportunity comes in the course of their work

(d) First aid appliances [Section 45]: Every factory shall provide and maintain during all working hours first-aid boxes or cupboards equipped with the prescribed contents for every **150 workers** ordinarily employed. Where more than **500 workers** are ordinarily employed in a factory, an ambulance room should be provided and maintained by every such factory.

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36. A factory has 100 male employees and 30 female employees. Factory Manager is keen to know whether the factory has to provide following welfare to the workers employed as per the Factories Act, 1948:

(*i*) First aid appliances

(*ii*) Canteens

(*iii*) Creches **[Dec. 2019 (3 Marks)]**

Ans.: Every factory has to comply with the provisions relating to the 'Welfare' which are given below:

(*i*) **First aid appliances [Section 45]:** Every factory shall provide and maintain during all working hours first-aid boxes or cupboards equipped with the prescribed contents for every 150 workers ordinarily employed.

Where more than 500 workers are ordinarily employed in a factory, an ambulance room should be provided and maintained by every such factory.

In the given case, since a total of 150 workers are employed in the factory and hence it has to provide first aid appliances.

(*ii*) **Canteens [Section 46]:** In every factory wherein more than 250 workers are ordinarily employed, a canteen shall be provided and maintained by the occupier for the use of workers.

In the given case, the canteen facility need not be provided, as it applies to factories employing more than 250 workers.

(*iii*) **Crèches [Section 48]:** In every factory wherein more than 30 women workers are ordinarily employed, the facility of suitable room or rooms should be provided and maintained for the use of children under the age of 6 years of such women.

In the given case, since the factory has 50 female workers, it has to provide crèche facility to its women workers.

SPECIAL PROVISIONS RELATING TO HAZARDOUS PROCESS

37. Define 'Hazardous Process' as used in the Factories Act, 1948. **[Dec. 2009 (5 Marks)]**

Ans.: Hazardous Process [Section 2(*cb*)]: Hazardous process means any process or activity in relation to an industry specified in the **First Schedule** where, unless special care is taken, raw materials used or the intermediate or finished products, bye products, wastes or effluents would:

- Cause material impairment to the health of the persons engaged, *or*
- Result in the pollution of the general environment.

Amendment in First Schedule: The State Government may, by notification in the Official Gazette, amend the First Schedule by way of *addition*, *omission* or *variation* of any industry, specified in the said Schedule.

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Ans.: Following special provisions are made relating to hazardous process.

Constitution of Site Appraisal Committees [Section 41A]:

(1) The State Government may appoint a site appraisal committee. The main function of such committee is to advise for grant of permission for the initial location involving a hazardous process or for the expansion of any such factory. Chief Inspector of the State is the Chairman of the Site Appraisal Committee

(2) The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of **90 days** of the receipt of such application.

(3) If a factory owned or controlled by the Central Government or to a corporation or company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of the Committee.

(4) The Site Appraisal Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

(5) Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process. It shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water & Air (Prevention & Control of Pollution) Acts.

Compulsory disclosure of information by the occupier [Section 41B]:

(1) The occupier of every factory involving a hazardous process shall disclose in prescribed manner all information regarding dangers, health hazards. The occupier shall also disclose the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage to the workers employed in the factory. Such disclosure should be made to the Chief Inspector, the local authority within whose jurisdiction the factory is situated and the general public in the vicinity.

(2) The occupier at the time of registering the factory lay down a detailed policy with respect to the health and safety of the workers employed and intimates such policy to the Chief Inspector and the local authority. Any changes made in the said policy are also required to be communicated at prescribed interval.

(3) Every occupier with the approval of the Chief Inspector shall draw up an on-site emergency plan and detailed disaster control measures for his factory. It should be make known to the workers employed and to the general public.

(4) Every occupier shall inform the Chief Inspector of the nature and details of the hazardous process in prescribed manner.

(5) Where any occupier of a factory contravenes the provisions, the licence can be cancelled.

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[Section 41C]: Every occupier of a factory involving any hazardous process shall:

(1) Maintain accurate and up to date health records, medical records of the workers who are exposed to any chemical toxic of any other harmful substances. Such records shall be accessible to the workers subject to prescribed conditions.

(2) Appoint person possessing qualifications and experience in handling hazardous substances and competent to supervise such handling and to provide at the working place all the necessary facilities for protecting the workers in the prescribed manner.

(3) Provide for medical examination of every worker working with a hazardous substance.

Power of Central Government to appoint Inquiry Committee [Section 41D]: Power of Central Government relating to appointment of Inquiry Committee is as follows:

(1) The Central Government in an extraordinary situation may appoint an Inquiry Committee to inquire into the standards of health and safety observed with a view to finding out the causes of any failure or neglect for the health and safety of the workers or the general public.

(2) Such Committee shall consist of a Chairman and 2 other members. Terms of reference and the tenure of office of its members shall be determined by the Central Government according to the requirements of the situation.

(3) The recommendations of the Committee shall be advisory in nature.

Emergency Standards [Section 41E]: Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or where the standards so prescribed are in-adequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any institution specialized in matter relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

Permissible limits of exposure of chemical and toxic substances [Section 41F]: The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the **Second Schedule.**

Workers participation in safety management [Section 41G]: The occupier shall, in every factory where a hazardous process takes place, set up a Safety Committee consisting of equal number of representatives of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf. However, the State Government may exempt the occupier of any factory or class of factories from setting up such Committee.

Right of workers to warn about imminent danger [Section 41H]: Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a like hood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.

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the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report of the action taken to the nearest Inspector.

If the occupier, agent, manager or the person in-charge is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall refer the matter forthwith to the nearest inspector whose decision on the question of the existence of such imminent danger shall be final.

UNIT II – CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

APPLICABILITY & DEFINITIONS

39. Write a short note on: Object of the Contract Labour (Regulation & Abolition) Act, 1970

Ans.: The preamble of the Act states that it is an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

In *Gammon India Ltd.* v. *Union of India*, the Supreme Court while dealing with the objects for which the Act was enacted observed that the Act was passed:

- To prevent the exploitation of contract labour.
- To introduce better conditions of work.
- To make provisions for regulation and abolition of contract labour.

The underlying policy of the Act is to abolish contract labour, whenever possible and practicable, and where it cannot be abolished, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities.

40. Discuss about Scope & Applicability of the Contract Labour (Regulation & Abolition) Act, 1970.

Or

Brief on the applicability of Contract Labour (Regulation & Abolition) Act, 1970 for Contractor and Establishment. Also state the welfare measures to be taken by the Contractors. [June 2021 (3 Marks)]

Ans.: Applicability [Section 1(4)]: The Contract Labour (Regulation and Abolition) Act, 1970 applies:

(*a*) **To every establishment** in which 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour.

(*b*) **To every contractor** who employs or who employed on any day of the preceding twelve months 20 or more workmen.

The Appropriate Government may, after giving **not less than 2 months notice** in the Official Gazette apply the Act to any establishment or contractor employing workmen less than 20.

apply to establishments in which work only of an ***intermittent*** or ***casual nature*** is performed.

If a question arises whether work performed in an establishment is of an intermittent or casual nature, the Appropriate Government shall decide that question after consultation with the Central or State Board, and its decision shall be final.

Explanation: Work performed in an establishment shall not be deemed to be of an intermittent nature:

(*i*) If it was performed for more than 120 days in the preceding 12 months.

(*ii*) If it is of a seasonal character and is performed for more than 60 days in a year.

Welfare measures to be taken by the Contractor: *Please refer to answer of Question No. 51.*

41. Define the term 'Contract Labour' under the Contract Labour (Regulation & Abolition) Act, 1970.

Ans.: Contract Labour [Section 2(*l*)(*b*)]: A workmen shall be deemed to be employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor. It makes no difference whether he is employed with or without the knowledge of the principal employer.

42. Define the term 'Principal Employer' under the Contract Labour (Regulation & Abolition) Act, 1970.

Ans.: Principal Employer [Section 2(*l*)(*g*)]: Principal employer means:

(1) **In any office or department of the Government or a local authority:** The head of that office or department or such other officer as the Government or the local authority may specify in this behalf.

(2) **In a factory:** The owner or occupier of the factory and a person named as the manager of the factory under the Factories Act, 1948.

(3) **In a mine:** The owner or agent of the mine and a person named as the manager of the mine.

(4) **In any other establishment:** Any person responsible for the supervision and control of the establishment.

ADVISORY BOARDS

43. Explain the composition and function of Advisory Boards constituted under Section 3 of the Contract Labour (Regulation & Abolition) Act, 1970. [June 1995 (5 Marks)]

Ans.: Central Advisory Board [Section 3]:

Constitution of Central Board: The Central Government has been empowered to constitute a Central Advisory Contract Labour Board.

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Government on such matters arising out of the administration of the Act as may be referred to it and to carry out other functions assigned to it under the Act.

Composition of Central Board: The Central Board shall consist of:

(*a*) A Chairman to be appointed by the Central Government,

(*b*) The Chief Labour Commissioner (Central), *ex-officio*,

(*c*) Such number of members, not exceeding 17 but not less than 11, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interest which, in the opinion of the Central Government ought to be represented on the Central Board.

The number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

44. Explain the composition and function of Advisory Boards constituted under Section 4 of the Contract Labour (Regulation & Abolition) Act, 1970. [Dec. 1997 (5 Marks)]

Ans.: State Advisory Board [Section 4]:

Constitution of State Board: The State Government is empowered to constitute the State Advisory Contract Labour Board.

Functions of State Board: The State Board shall advise to the State Governments on such matters arising out of the administration of the Act as may be referred to it and to carry out other functions assigned to it under the Act.

Composition of State Board: The State Board shall consist of:

(*a*) A Chairman to be appointed by the State Government

(*b*) The Labour Commissioner, *ex-officio*,

(*c*) Such number of members, not exceeding 11 but not less than 9, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen any other interest which, in the opinion of the Central Government ought to be represented on the State Board.

The number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

45. Explain the power of Central and State Board to constitute committee under the Contract Labour (Regulation & Abolition) Act, 1970.

Ans.: Power to constitute committees [Section 5]: The Central or State Board may constitute such committees and for such purpose or purposes as it may think fit.

Such committee shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

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its meetings as may be prescribed:

Provided that no fees shall, be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.

REGISTRATION OF ESTABLISHMENT

46. Is it obligatory for principal employer to get the establishment registered under the Contract Labour (Regulation & Abolition) Act, 1970? If so, briefly explain the procedure for the same. [June 1997 (5 Marks)]

Or

What are the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 with regard to registration of establishment? [June 2000 (3 Marks)]

Ans.: Following are the various provisions relating to registration under the Contract Labour (Regulation & Abolition) Act, 1970:

(1) **Appointment of Registering Officer [Section 6]:** The Appropriate Government may appoint persons being Gazetted Officers to be registering officers by notification in the Official Gazette and define the limits within which a registering officer shall exercise the powers conferred on him under the Act.

(2) **Registration of certain establishments [Section 7]:** Every principal employer of an establishment to which the Act applies shall make an application to the registering officer in prescribed form for registration of the establishment.

The Appropriate Government may, by notification in the Official Gazette, fix time period for making such application with respect to establishments generally or with respect to any class of them. The registering officer may entertain application for registration after expiry of the period fixed for registration, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time.

If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer certificate of registration.

(3) **Revocation of registration in certain cases [Section 8]:** The registration can be revoked in the following circumstances.

- If the registering officer is satisfied that the registration has been obtained by misrepresentation or suppression of any material fact.
- That the registration has become useless and become ineffective for any other reason.

In both the cases, the registering officer shall give an opportunity to the principal employer of the establishment to be heard. He will also obtain previous approval of the Appropriate Government in case the registration is to be revoked.

(4) **Effect of non-registration [Section 9]:** No principal employer of an establishment to which the Act applies can employ contract labour, if:

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- A certificate has been revoked after being issued.

PROHIBITION ON EMPLOYMENT OF CONTRACT LABOUR

47. State the steps which are required to be taken by an appropriate government before issuing a notification prohibiting employment of contract labour in any process, operation or other work in any establishment?
[June 2001 (7 Marks)]

Or

Write a short note on: Prohibition on employment of contract labour
[Dec. 2008 (5 Marks)], [June 2010 (5 Marks)]

Ans.: Prohibition on employment of contract labour [Section 10]: This is the most significant provision in the Act. Section 10 provides that the Appropriate Government may, after consultation with the Central or State Board prohibit by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

Before issuing such notification the Appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and following relevant factors:

- Whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment.
- Whether it is of perennial nature (sufficient duration) having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment.
- Whether it is done ordinarily through regular workmen in such type of establishments
- Whether it is sufficient to employ considerable number of whole-time workmen.

Explanation: If a question arise whether any process or operation or other work is of perennial nature, the decision of the Appropriate Government thereon shall be final.

48. Is the principal employer liable to absorb contract labour where engagement of labour force through the contractor to do work of a perennial nature has been abolished?
[June 2005 (3 Marks)]

Or

Some contract labour was engaged by an organization. There was subsequently prohibition of employment of contract labour in that category as a consequence of the notification issued by the Central Government. The employer did not absorb the contract labour and employ them on regular basis. The workmen challenged the action of the organization. Will they succeed?
[June 2010 (4 Marks)]

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Act, 1970 for absorption of contract labour in the event of prohibition of employment of contract labour in any category of work under section 10 of the Act.

The Supreme Court had held that neither Section 10 nor any other provision in the Act whether expressly or by necessary implication provides for automatic absorption of contract labour on issuing a notification by the Appropriate Government under section 10 prohibiting employment of contract labour in any process or operation or other work in any establishment. Consequently, the principal employer cannot be required to order absorption of contract labour working in the concerned establishment. [*Steel Authority of India* v. *National Union of Water Front Workers & Others*]

49. Raju, a contract labour, engaged for keeping industrial premises clean, has been engaged for 270 days in a year. He approached the employer to absorb him in the establishment. Is the employer under an obligation to absorb the contract labour under the Contract Labour (Regulation & Abolition) Act, 1970? [June 2003 (3 Marks)]

Ans.: In the case of *Steel Authority of India* v. *National Union of Water Front Workers & Others*, the Supreme Court interpreted Section 10 and opined that neither Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 nor other provisions of the Act weather expressly or by necessary implication provides for absorption of workmen being contract labour as regular one. Thus, the employer is not under an obligation to absorb Raju, a contract labour, as regular worker in his establishment.

LICENSING OF CONTRACTORS

50. What are the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 with regard to licensing of contractors? [June 2000 (3 Marks)]

Or

Saravan is carrying out building contract works for industrial and commercial customers. He engages 25 workers on regular basis, wants to know about the licensing requirement under the Contract Labour (Regulation & Abolition) Act, 1970. [Dec. 2019 (5 Marks)]

Ans.: Applicability [Section 1 (*4*)]: The Contract Labour (Regulation and Abolition) Act, 1970 applies:

(*a*) **To every establishment** in which 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour.

(*b*) **To every contractor** who employs or who employed on any day of the preceding twelve months 20 or more workmen.

Apart from registration of establishments employing contract labour, the Act contains provisions for licensing of contractors.

(1) **Appointment of licensing officer [Section 11]:** The Appropriate Government appoints Gazetted Officers to be licensing officers and define the limits of their jurisdiction. Orders regarding appointment of licensing

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Gazette.

(2) **Licensing of contractors [Section 12]:** Contractor can undertake or execute any work though contract labour only as per license issued by the licensing officer. The license may contain certain conditions like conditions as to hours of work, fixation of wages and other essential amenities etc.

The license shall be issued on the payment of prescribed fee and on the deposit of security for the due performance of the conditions prescribed in the license.

WELFARE, HEALTH & PAYMENT OF WAGES

51. Explain the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 relating to welfare and health of contract labour? **[Dec. 2000 (8 Marks)]**

Or

When the principal employer liable to provide for welfare, health and other facilities and pay wages to contract workers under the Contract Labour (Regulation & Abolition) Act, 1970? **[June 2009 (5 Marks)]**

Ans.: The contractors are required to take certain specific measures for the welfare and health of contract labour. The relevant provisions are as follows:

(1) **Canteens [Section 16]:** The Appropriate Government has powers to make rules requiring contractor to provide one or more canteens for the use of contract labour. This provision is applicable to every establishment to which the Act applies and where **100 or more** contract labour are ordinarily employed by a contractor and the employment of the contract labour is likely to continue for prescribed period.

The rules may provide for:

- The date by which the canteen shall be provided.
- The number of canteens and the standards in respect of construction, accommodation, furniture and other equipment of the canteens.
- The food stuffs which may be served therein and the charges which may be made.

(2) **Rest Rooms [Section 17]:** If contract labour is required to halt at night for work of an establishment to which the Act applies and such work is likely to continue for prescribed period, then rest room facility shall be provided and maintained by the contractor for the contract labour.

The rest room to be provided:

- Shall be sufficiently lighted and ventilated
- Shall be maintained in a clean and comfortable condition.

(3) **Other Facilities [Section 18]:** It shall be the duty of every contractor employing contract labour to provide and maintain for the contract labour certain other facilities mention below:

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- Sufficient number of latrines & urinals.
- Washing facilities.

(4) **First Aid Facilities [Section 19]:** The contractor is required to provide and maintain a first aid box equipped with the prescribed contents where contract labour is employed by him. The first aid box should be readily accessible during working hours.

(5) **Liability of principal employer in certain cases [Section 20]:** If the prescribed amenities (canteens, rest rooms and other facilities, first aid box) are not provided by the contractor then such amenities shall be provided by the principal employer.

All expenses incurred by the principal employer in providing the amenity may be recovered by him from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

52. What are the provisions regarding responsibility for payment of wages to contract labour under the Contract Labour (Regulation & Abolition) Act, 1970?

Or

A contractor, having valid license under the Contract Labour (Regulation & Abolition) Act, 1970, supplies 20 persons to Gamma Ltd. for completion of a project work spread over 20 days. Who is liable to make them payment of wages? [Dec. 2003 (3 Marks)]

Ans.: Responsibility for payment of wages [Section 21]: A common complaint against the contractors has been that some of them do not pay proper wages to the contract labourers or those payments are not made in time or that arbitrary deductions are made from wages. To take care of such malpractices, Section 21 has been incorporated which is discussed below:

- A contractor shall be responsible for payment of wages to each contract labour before the expiry of prescribed period.
- Every principal employer shall nominate a representative who shall be present at the time of payment of wages by the contractor.
- It shall be the duty of the contractor to ensure that wages are paid in the presence of the authorized representative of the principal employer.
- If the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages and recover the amount so paid from the contractor. Such amount can be recovered either by deduction from amount payable to the contractor or as a debt payable by the contractor.

53. A contractor made short payment of wages to a worker employed by him as contract labour. The worker sought the amount due from the principal employer. Will he succeed? [Dec. 2008 (4 Marks)]

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if the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages and recover the amount so paid from the contractor. Such amount can be recovered either by deduction from amount payable to the contractor or as a debt payable by the contractor.

Thus, workers will succeed to recover the short wages from principal employer and amount so paid by the principal employer can be recovered by him from the contractor.

UNIT III — CHILD AND ADOLESCENT LABOUR (PROHIBITION & REGULATION) ACT, 1986

54. What are the objects of enacting the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986?

Ans.: The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to:

- To prohibit the engagement of children in all occupations.
- To prohibit the engagement of adolescents in hazardous occupations and processes.
- To make provisions for matters connected therewith or incidental thereto.

The Act prohibits employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free & Compulsory Education Act, 2009.

55. State the provisions regarding prohibition of employment of children and adolescents under the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986.

Ans.: Prohibition of employment of children in any occupation and process [Section 3]: No child shall be employed or permitted to work in any occupation or process.

However, the child shall be employed or permitted to work in following cases:

(*a*) Where the child helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations.

(*b*) Where the child works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed

However, no such work shall effect the school education of the child.

Explanation:

(*a*) "Family" in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother.

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which is performed by the members of the family with the engagement of other persons.

(c) "Artist" means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities.

Prohibition of employment of adolescents in certain hazardous occupations and processes [Section 3A]: No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.

However, the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work.

The hazardous occupations or processes set forth in the Schedule are as under:

(1) Mines.

(2) Inflammable substances or explosives.

(3) Hazardous process.

56. Discuss the following provisions of the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986:

(a) Hours and Period of work

(b) Weekly Holidays

Or

Daadi ke Achaar Pvt. Ltd. is producing the pickles of all varieties. A few of the workers in the company are in the age group of 15 to 18. The company seeks your advice on the provisions regarding working hours and period of work under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. Advise the company. [June 2023 (3 Marks)]

Ans.: Hours and period of work [Section 7]: No adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that no period shall exceed **three hours** and that no adolescent shall work for more than three hours before he has had an **interval for rest** for at least **one hour**.

The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than **six hours**, including the time spent in waiting for work on any day.

This section also stipulates that:

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

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is entitled in each week, a holiday or one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

57. Write a short note on: Maintenance of register the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986

Ans.: Maintenance of register [Section 11]: Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing:

- Name and date of birth of every adolescent so employed or permitted to work.
- Hours and periods of work of any such adolescent and the intervals of rest to which he is entitled.
- Nature of work of any such adolescent.
- Such other particulars as may be prescribed

58. State the provisions relating to penalties for offence under the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986.

Ans.: Penalties [Section 14]:

(1) **Penalty for employing child:** Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable –

- With imprisonment for a term which shall not be less than 6 months but which may extend to **2 years**, *or*
- With fine which shall not be less than ₹ **20,000** but which may extend to ₹ **50,000**, *or*
- With **both**.

However, the parents or guardians of children shall not be punished unless they permit child to work for commercial purposes.

(2) **Penalty for employing adolescent:** Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable –

- With imprisonment for a term which shall not be less than 6 months but which may extend to **2 years** *or*
- With fine which shall not be less than ₹ **20,000** but which may extend to ₹ **50,000**, or
- With **both**.

However, the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.

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guardians of any child or adolescent shall not be liable for punishment, in case of the first offence.

(4) **Penalty for subsequent offence:**

Whoever, having been convicted of an offence under sections 3/3A commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than **1 year** but which may extend to **2 years.**

The parents or guardians having been convicted of an offence under sections 3/3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ₹ **10,000**.

(5) **Residual Penalty:** Whoever fails to comply with or contravenes any other provisions of the Act or the rules made thereunder, shall be punishable –

- With simple imprisonment which may extend to **1 month** *or*
- With fine which may extend to ₹ **10,000** or
- With **both.**

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UNIT I – INDUSTRIAL DISPUTES ACT, 1947

OBJECTS & DEFINITIONS

1. State the objects & scope of the Industrial Disputes Act, 1947 [Dec. 2001 (10 Marks)], [June 2008 (5 Marks)]

Ans.: Industrial peace is essential for the growth and development of the industrial sector. Thus, the Industrial Disputes Act, 1947 was enacted to provide machinery for peaceful resolution of disputes and to promote harmonious relation between employers and workers.

As per preamble, the Act is to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. The legislation is enacted to ensure social justice to both employers and employees and advance progress of industry by bringing about existence of harmony and cordial relationship between the employers and employees.

Objectives of the Act as laid down by the Supreme Court in ***Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate*** are as follows:

- To secure amity and good relations between the employer and workmen.
- To investigate and settlement of industrial dispute.
- To have a right of representation by trade unions.
- To prevent illegal strikes and lock-outs.
- To provide relief to workmen for lay-off and retrenchment.
- To promote collective bargaining system.

2. Elucidate the concept of 'industry' as stated under the Industrial Disputes Act, 1947.

Or

Write a short note on: Tests for determination of 'industry' under the Industrial Disputes Act, 1947. [Dec. 2008 (5 Marks)], [Dec. 2012 (5 Marks)]

Ans.: Industry [Section 2(*j*)]: Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen.

Important points relating to definition of industry:

Tests for determination of "industry": The Supreme Court carried out an in-depth study of the definition of the term industry in the case of *Bangalore Water Supply &*

an activity is covered by the definition of "industry" or not.

- There is systematic activity,
- It is organized by co-operation between employer and employee.
- It is for the production and/or distribution of goods and services to satisfy human wants and wishes, not spiritual or religious but inclusive of material things or services geared to celestial bliss *e.g.* making on a large scale, *prasad* or food.
- Absence of profit motive or gainful objective is irrelevant wherever the undertaking is whether in the public, joint, private or other sector.
- The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

Section 2(*j*) was amended by Amendment Act, 1982, which is given below. *(Date is yet to be notified):*

"Industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,

(*i*) any capital has been invested for the purpose of carrying on such activity or

(*ii*) such activity is carried on with a motive to make any gain or profit, and includes–

(*a*) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948

(*b*) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include –

(1) Any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one. *Explanation:* For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (*f*) of section 2 of the Plantations Labour Act, 1951 or

(2) Hospitals or dispensaries or

(3) Educational, scientific, research or training institutions or

(4) Institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service or

(5) Khadi or village industries or

(6) Any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space or

(7) Any domestic service or

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(8) Any activity, being a profession practiced by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than 10 or

(9) Any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

3. Prem and Qureshi established a legal consultancy firm. They employed three law graduates, a stenographer and a typist to assist the firm. After five years, the services of the stenographer were terminated without assigning any reason. He raised a dispute before the Labour Court asking for reinstatement or retrenchment compensation as contemplated by the Industrial Disputes Act, 1947. Will he succeed? [Dec. 2006 (3 Marks)]

Ans.: As per Section 2(*j*) of the Industrial Disputes Act, 1947, Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen.

The stenographer will not succeed because a legal consultancy firm is not an industry as per existing definition of "industry" as per Section 2(*j*).

However, as per amended definition it is 'industry' and stenographer will succeed. However amended definition has not come into force till now.

4. Define and explain the term 'workman' under the Industrial Disputes Act, 1947? [Dec. 1998 (5 Marks)]

Ans.: Workman [Section 2(*s*)]: Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and includes:

(*a*) Any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or

(*b*) Any person whose dismissal, discharge or retrenchment has led to that dispute.

Workman does not include any such person:

(*i*) Who is subject to the Army Act, 1950/Air Force Act, 1950/Navy Act, 1957.

(*ii*) Who is employed in the police service or as an officer or other employee of a prison.

(*iii*) Who is employed mainly in a managerial or administrative capacity or

(*iv*) Who is employed in a supervisory capacity drawing more than ₹ **10,000 p.m.** as wages.

(*v*) Who is exercising either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

5. Would you treat the following persons as 'workman' under the Industrial Disputes Act, 1947?

(*i*) Works manager

(*ii*) Supervisor drawing wages exceeding ₹ 12,000 per month

(*iii*) Teacher

(*iv*) Employee of prison **[Dec. 1998 (4 Marks)]**

Ans.:

Persons	Workman Yes or no	Reasons
Works manager	No	Excluded by definition of 'workman'. Persons employed mainly in the managerial or administrative capacity are not "workman" as per Section 2(*s*).
Supervisor drawing wages exceeding ₹ 12,000 p.m.	No	Excluded by definition of 'workman'.
Teacher	No	Imparting of education which is the main function of the teachers cannot be considered as skilled, unskilled, manual, supervisory, technical or clerical work. Hence, not a workman.
Employee of prison	No	Excluded by definition of 'workman'

6. Are following included in the category of 'workman' as per the Industrial Disputes Act, 1947?

(*i*) College lecturer

(*ii*) Works manager

(*iii*) Gardner working at the bungalow provided to the production manager of a public utility company

(*iv*) Soldier serving in the Indian Army

(*v*) Development officer of the LIC. **[Dec. 2001 (6 Marks)]**

Or

Sonu and Raju are working as 'gardeners' to look after the garden attached to the bungalow provided by the company to the managing director. Can they be treated as 'workmen'? **[Dec. 2004 (3 Marks)]**

Ans.:

Persons	Workman Yes or no	Reasons
College lecturer	No	Imparting of education which is the main function of the teachers cannot be considered as skilled, unskilled, manual, supervisory, technical or clerical work. Hence, college lecturer not a workman.

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Persons	Workman Yes or no	Reasons
Works manager	No	Excluded by definition of 'workman'.
Gardner working at the bungalow provided to the production manager of a public utility company	Yes	The SC held that 'malis' looking after the garden attached to bungalows provided by the company to its officers and directors are workman as they are engaged in operations incidentally connected with the main industry carried on by the employer. [*JK Cotton Spinning & Weaving Mills Co. Ltd. v. LAT*]
Soldier serving in the Indian Army	No	Excluded by definition of 'workman'.
Development officer of the LIC.	Yes	Development officer in LIC is a workman. [*H. S. Chauhan v. LIC*]

7. Bhaskar, a school teacher, was dismissed from service for gross misconduct. He seeks reinstatement under the Industrial Disputes Act, 1947 on the ground that he is a 'workman' and that his dismissal amounts to an industrial dispute. Will he succeed?
[June 2005 (3 Marks)], [Dec. 2005 (3 Marks)], [Dec. 2012 (4 Marks)]

Ans.: The Supreme Court in *Sunderambal v. Government of Goa* held that the teachers employed by the educational institution are not workmen within the meaning of Section 2(*s*) of the Industrial Disputes Act, 1947, as imparting of education which is the main function of the teachers cannot be considered as skilled, unskilled, manual work, supervisory work, technical work or clerical work.

The teacher necessarily performs intellectual duties and the work is mental and intellectual as distinct from manual. As Adarsh is not workmen within the meaning of Section 2(*s*), he will not succeed in challenging the order of his dismissal under the Industrial Dispute Act, 1947.

8. Define the term 'industrial dispute' as used in the Industrial Dispute Act, 1947.
[June 1998 (5 Marks)]

Ans.: Industrial Dispute [Section 2(*k*)]: Industrial dispute means any dispute or difference between:

(*i*) Employers and employers,

(*ii*) Employers and workmen,

(*iii*) Workmen and workmen,

Industrial dispute may be connected with the –

(*a*) Employment or non-employment,

(*b*) Terms of employment,

(*c*) With the conditions of labour, of any person.

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9. Write a short on: Lay-off compensation [June 2007 (3 Marks)]

Ans.: Lay-off is a temporary stoppage of work.

Lay-off [Section 2 (*kkk*)]: Lay-off means the failure, refusal or inability of employer to give employment to a workman whose name is borne on the muster rolls and who has not been retrenched, on account of:

(*a*) Shortage of coal, power or raw materials

(*b*) Accumulation of stocks

(*c*) Breakdown of machinery

(*d*) Natural calamity

(*e*) For any other connected reason

Explanation:

1. If workman presents himself for work at the appointed day and is not given work within 2 hours of his presence then he shall be deemed to have been laid-off for that day.
2. If the workman is asked to present in second half of the shift and is given employment then, he shall be deemed to have been laid-off only for half of that day.
3. If he is not given any work even in second half of the shift, he shall be deemed to have been laid-off for the day and shall be entitled to full basic wages and dearness allowance.

Right of workmen laid-off for compensation: Section 25 provides that whenever a workman who has completed one year of continuous service under an employer is laid-off, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays, compensation which shall be equal to 50% of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off.

Thus, Lay-off Compensation = (Basic Wages + DA) × 50%.

10. Due to accumulation of stocks, the company declared lay-off for 5 days. The workers union protested that it was not the legal right of the employer to lay-off the workers and that they should be paid full wages for the period of lay-off. Will they succeed in a Court of law, if the employer refuses to concede to their demand? [June 2006 (3 Marks)]

Ans.: Lay-off is a temporary stoppage of work.

Lay-off [Section 2 (*kkk*)]: Lay-off means the failure, refusal or inability of employer to give employment to a workman whose name is borne on the muster rolls and who has not been retrenched, on account of:

(*a*) Shortage of coal, power or raw materials

(*b*) Accumulation of stocks

(*c*) Breakdown of machinery

(*d*) Natural calamity

(*e*) For any other connected reason

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of stocks is one of ground of lay-off under Section 2 (*kkk*) of the Industrial Dispute Act, 1947. When workers are laid off they are entitled to receive lay-off compensation as per Section 25C which is equal to 50% of (Basic wages + DA).

In view of specific legal provisions mentioned above workers claim that they should be paid full wages for the period of lay-off is not justified.

11. Fragile Ltd. was running in continuous losses for 5 years. As a result, the company's financial position worsened. The company declared lay-off of 10 of its employees. The employees protested the lay-off. Is the action of the employer justified? [Dec. 2006 (3 Marks)]

Ans.: Lay-off is a temporary stoppage of work.

Lay-off [Section 2 (*kkk*)]: Lay-off means the failure, refusal or inability of employer to give employment to a workman whose name is borne on the muster rolls and who has not been retrenched, on account of:

(*a*) Shortage of coal, power or raw materials

(*b*) Accumulation of stocks

(*c*) Breakdown of machinery

(*d*) Natural calamity

(*e*) For any other connected reason

Lay-off is a temporary stoppage of work. Employer can call lay-off only for those reasons that are covered in Section 2(*kkk*) of the Industrial Dispute Act, 1947. Worsening of financial position is not a valid ground of lay-off as per Section 2(*kkk*). Thus, action of employer is not justified.

12. Pramod Electronics is a small scale industry (SSI) employing 15 workmen. Due to a fall in demand for its products, the management decided to lay-off its workmen. The workmen contended that they cannot be laid-off as there is no provision to lay-off in the terms and conditions of appointment. Examine the legality of the action of the management. [June 2011 (4 Marks)]

Ans.: Lay-off is a temporary stoppage of work.

Lay-off [Section 2 (*kkk*)]: Lay-off means the failure, refusal or inability of employer to give employment to a workman whose name is borne on the muster rolls and who has not been retrenched, on account of:

(*a*) Shortage of coal, power or raw materials

(*b*) Accumulation of stocks

(*c*) Breakdown of machinery

(*d*) Natural calamity

(*e*) For any other connected reason

Lay-off is a temporary stoppage of work. Employer can call lay-off only for those reasons that are covered in Section 2(*kkk*) of the Industrial Dispute Act, 1947. Fall in demand is not a valid ground of lay-off as per Section 2(*kkk*). Thus, action of employer is not justified.

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13. Distinguish between Lay-off & Lock-out. [Dec. 2002 (5 Marks)], [June 2009 (5 Marks)]

Ans.: Following are the main points of distinctions between lay-off & lock-out:

Points	Lay-off	Lock-out
Meaning	Lay-off means the failure, refusal or inability of employer on account of: (*a*) Shortage of coal, power or raw materials or (*b*) Accumulation of stocks or (*c*) Breakdown of machinery or (*d*) Natural calamity or (*e*) For any other connected reason to give employment to a workman whose name is borne on the muster rolls and who has not been retrenched.	Lock-out means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.
Reason	Lay-off is the result of trade reasons.	Lock-out is a weapon of collective bargaining in the hands of employer.
Continuity of business	In lay-off, the business continues.	In lock-out, the place of business is closed down for the time being.
Wages	Workman is entitled to get specified wages for lay off period.	In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be *unjustified* and *illegal*.

However, both are of temporary nature and in both cases the contract of employment is not terminated but remains in suspended animation.

14. Write a short on: Settlement under the Industrial Dispute Act, 1947 [Dec. 1998 (5 Marks)]

Or

A copy of the memorandum of settlement was not dispatched by the conciliation officer to the Appropriate Government. Will the settlement be treated as invalid? [June 2002 (3 Marks)]

Ans.: Settlement [Section 2(*p*)]:

(*a*) Settlement means a settlement arrived at in the course of conciliation proceeding.

(*b*) Settlement includes a written agreement between the employer and workmen, where such agreement has been signed by the parties in prescribed manner and a copy thereof has been sent to Authorized Officer of the Appropriate Government and the Conciliation Officer.

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of settlement was not dispatched by the Conciliation Officer to the Appropriate Government as required under the Act.

15. Distinguish between: 'Award' & 'Settlement' under the Industrial Dispute Act, 1947 **[Dec. 2004 (5 Marks)], [Dec. 2010 (5 Marks)]**

Ans.: Following are the main points of distinctions between award & settlement:

Points	Award	Settlement
Meaning	Award means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A.	(*a*) Settlement means a settlement arrived at in the course of conciliation proceeding. (*b*) Settlement includes a written agreement between the employer and workmen, where such agreement has been signed by the parties in prescribed manner and a copy thereof has been sent to Authorized Officer of the Appropriate Government and the Conciliation Officer.
Agreement	There is no agreement as it is the decision of Labour Court or Tribunal.	Settlement is an agreement between employers and employees.

16. Write a short on: Wages under the Industrial Dispute Act, 1947

Ans.: Wages [Section 2(*rr*)]: Wages means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to workman in respect of his employment or of work done in such employment, and includes:

(*i*) Such allowance (*including dearness allowance*) as the workman is for the time being entitled.

(*ii*) The value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles.

(*iii*) Any travelling concession.

(*iv*) Any commission payable on the promotion of sales or business or both.

Wages does not include:

(*a*) Any bonus,

(*b*) Any contribution paid or payable by the employer to any pension fund or PF or for the benefit of the workman under any law for the time being in force,

(*c*) Any gratuity payable on the termination of his service.

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17. Explain the meaning of and procedure for, 'Retrenchment' under the Industrial Dispute Act, 1947. [Dec. 1993 (4 Marks)]

Ans.: Retrenchment [Section 2(*oo*)]: Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, *but does not include*:

(*a*) Voluntary retirement of the workman.

(*b*) Retirement due to superannuation if the contract so provides.

(*c*) Termination of the service of the workman as a result of the non-renewal of the contract of employment.

(*d*) Termination of the service of workman on the ground of continued ill-health.

Note: *If the termination of service amounts to 'retrenchment', the worker can claim Retrenchment Compensation under the Industrial Dispute Act, 1947. However, if the termination of service does not amount to 'retrenchment', the worker cannot claim Retrenchment Compensation.*

18. The employer terminated the service of a workman after accepting his resignation. Does the termination amount to retrenchment? [Dec. 1991 (5 Marks)]

Ans.: According to Section 2(*oo*) of the Industrial Dispute Act, 1947, retrenchment does not include voluntary retirement of the workman. Further the Supreme Court in *J K Cotton Spg. & Wvg. Mills Co. Ltd.* v. *State of UP*, held that resignation by the employee is covered by the expression 'voluntary retirement' and voluntary retirement is not covered by 'retrenchment' as defined in Section 2(*oo*). Hence, it does not amount to 'retrenchment' within the meaning of Section 2(*oo*) of the Industrial Dispute Act, 1947.

19. The service of bus conductor was terminated on the ground of weak eye sight. Does it amount to a valid ground for retrenchment and will employee succeed in getting retrenchment compensation under the Industrial Dispute Act, 1947? [June 2003 (3 Marks)]

Ans.: In *Anand Behari* v. *RSRTC*, the services of bus conductor were terminated on the ground of weak eye sight which was below the standard requirement. The Supreme Court held that the termination is due to continued ill-health and that must have a bearing on the normal discharge of their duties. Hence, it does not amount to 'retrenchment' within the meaning of Section 2(*oo*) of the Industrial Dispute Act, 1947 and employee will not succeed in getting retrenchment compensation.

20. Two workers were employed on daily wages basis as night watchman. As per the terms of contract, their employment was come to an end on completion of work. When their services were not required, their services were terminated and they were not paid any retrenchment compensation. Are the workers entitled to it under the Industrial Dispute Act, 1947? [Dec. 2003 (3 Marks)]

Or

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gent work were terminated after the completion of the said work. Workmen sought compensation as the termination amounted to retrenchment. Will they succeed? [Dec. 2008 (3 Marks)]

Ans.: According to Section 2(*oo*) of the Industrial Dispute Act, 1947, retrenchment does not include termination of the service of the workman as a result of the non-renewal of the contract of employment.

Further, when persons are employed on daily wages for specific work there termination from work will not constitute retrenchment.

As stated in given case, the workman was on casual basis on daily wages for specific period and for the specific work. The termination of his service it does not amount to 'retrenchment' within the meaning of Section 2(*oo*) of the Industrial Dispute Act, 1947. Hence, the workman will not succeed.

21. Anil, a workman raised an industrial dispute contending that he was employed on regular basis and his services were illegally terminated. The employer took the stand that the workman was engaged on casual basis on daily wages for a specific period and for the specific work and that his services were not terminated but he had abandoned his job. The employer did not produce attendance record before the Labour Court. The workman alleged violation of the provisions of the Industrial Disputes Act, 1947 relating to retrenchment. Will he succeed? [June 2009 (4 Marks)]

Ans.: When persons are employed on daily wages for specific work there termination from work will not constitute 'retrenchment' as per Section 2(*oo*) of the Industrial Dispute Act, 1947.

It has been held by Supreme Court in a series of cases that the burden of proof is on workman to show that he is regular employee not the employee engaged for specific period or for the specific work.

As stated above, the workman was working on casual basis on daily wages for specific period and for the specific work. The termination of his service it does not amount to 'retrenchment' within the meaning of Section 2(*oo*) of the Industrial Dispute Act, 1947. Hence, the workman will not succeed.

22. Mohan has been working in a foundry for the last 20 years. Recently, it was found that he was suffering from diabetes. Based on that, the management terminated his services. Does the action of the management tantamount to retrenchment? [Dec. 2010 (4 Marks)]

Ans.: According to Section 2(*oo*) of the Industrial Dispute Act, 1947, retrenchment means the termination by the employer of the service of a workman for any reason whatsoever. Retrenchment does not include termination of the service of workman on the ground of continued ill-health.

Ill-health means disease, physical defect or infirmity or unsoundness, *i.e.* an employee suffering from infirmity of old age resulting in incapacity of work. A person suffering from diabetes cannot be regarded as unfit for the organization on account of ill-health. Hence, termination of service of Mohan by management amount to retrenchment.

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Ans.: Following are the main points of distinction between lay-off & retrenchment:

Points	Lay-off	Retrenchment
Meaning	Lay-off is a temporary inability or refusal to give employment on account of shortage of coal, power or raw materials or accumulation of stocks or breakdown of machinery or natural calamity or for any other connected reason.	Retrenchment means the termination of the service by the employer.
Break in service	Lay-off does not involve break of continuous service.	Retrenchment involve break of continuous service.
Reason	Lay-off is the result of trade reasons.	Retrenchment is on account of surplus labour.

AUTHORITIES FOR INVESTIGATION & SETTLEMENT OF INDUSTRIAL DISPUTES

24. State the authorities for settlement of industrial dispute under the Industrial Dispute Act, 1947. [Dec. 2009 (5 Marks)]

Ans.: The Industrial Dispute Act, 1947 provides for following authorities:

(1) Works Committee [Section 3]:

- The Appropriate Government may by general or special order require the employer to constitute a works committee, where **100 or more workmen** are employed.
- The works committee will be comprised of the representatives of employers and workmen engaged in the establishment.
- It shall be the duty of the works committee to promote measures for securing and preserving amity and good relations between the employer and workmen.

(2) Conciliation officers [Section 4]:

- The Appropriate Government may appoint Conciliation Officers as it thinks fit for mediating and promoting the settlement of industrial disputes.
- The Conciliation Officer may be appointed for a specified area or for specified industries either permanently or for a limited period.

(3) Boards of Conciliation [Section 5]:

- The Appropriate Government may constitute a Board of Conciliation for promoting the settlement of an industrial dispute.
- It shall be the duty of Board to endeavour to bring a settlement of the dispute.
- The Board may also do all things for a fair and amicable settlement of the dispute.

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the Appropriate Government together with a memorandum of settlement signed by all the parties to the dispute.

- In case no settlement is arrived at, the Board shall forward a report to Appropriate Government enlisting therein the steps taken by the Board for ascertaining the facts and circumstances related to the dispute and for bringing about a settlement.
- The Board will also enlist the reasons on account of which in its opinion a settlement could not be arrived at and its recommendations for determining the disputes.

(4) Courts of Inquiry [Section 6]:

- The Appropriate Government may constitute a Court of Inquiry for inquiring any matter connected with an industrial dispute.
- It is the duty of such a Court to inquire into matters referred to it and submit its report to the Appropriate Government within a period of **6 months** from the commencement of the inquiry. The period is not mandatory and the report may be submitted even beyond the period of 6 months without affecting the legality of the inquiry.

(5) Labour Courts [Section 7]:

- The Appropriate Government is empowered to constitute Labour Courts for adjudication of industrial disputes relating to matters specified in the **2nd Schedule**
- When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to hold its proceedings expeditiously, and submit its award to the Appropriate Government soon after the conclusion of the proceedings.
- No time period has been laid down for the completion of proceedings.

(6) Tribunals [Section 7A]:

- The Appropriate Government may by notification in the Official Gazette, constitute Industrial Tribunals for the adjudication of industrial disputes specified in the **2nd or 3rd Schedule.**
- The Industrial Tribunal gets its jurisdiction on a reference by the Appropriate Government under section 10.
- The duties of Industrial Tribunal are identical with the duties of Labour Court, *i.e.*, on a reference of any industrial dispute, the Tribunal shall hold its proceedings expeditiously and submit its award to the Appropriate Government.

(7) National Tribunals [Section 7B]:

- The Central Government has been empowered to constitute one or more National Tribunals for the adjudication of industrial disputes which involve questions of *national importance* or are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes.

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judicate the dispute expeditiously and submit its award to the Central Government. [Section 15]

25. Distinguish between: Courts of Inquiry & Labour Courts [June 2011 (5 Marks)]

Ans.: Following are the main points of distinctions between Courts of Inquiry & Labour Courts:

Points	Courts of Inquiry	Labour Courts
Meaning	The Appropriate Government may constitute a Court of Inquiry for inquiring any matter connected with an industrial dispute.	The Appropriate Government is empowered to constitute Labour Courts for adjudication of industrial disputes relating to matters specified in the **2nd Schedule.**
Function	Main function of Court of Inquiry to make inquiry into industrial disputes.	Main function of Labour Court is to adjudicate the industrial dispute.
Time limit	It is the duty of such a Court to inquire into matters referred to it and submit its report to the Appropriate Government within a period of **6 months** from the commencement of the inquiry.	No time period has been laid down for the completion of proceedings by Labour Court.
Constitution	A Court may consist of one independent person or of such number of independent persons as the Appropriate Government may think fit. Where a Court consists of two or more members, one of them shall be appointed as the chairman.	Labour Court consists of one person to be appointed by Appropriate Government.

26. Briefly mention the circumstances under which an industrial dispute may be voluntarily referred to arbitration. [June 2002 (5 Marks)]

Or

Discuss provisions relating to arbitration for the resolution of industrial dispute under the Industrial Dispute Act, 1947. [Dec. 2011 (5 Marks)]

Or

Write a short note on: Arbitral Award for industrial dispute [June 2019 (3 Marks)]

Ans.: Voluntary reference of disputes to arbitration: Section 10A provides for the settlement of industrial disputes by voluntary reference of such dispute to arbitrators. To achieve this purpose, Section 10A makes the following provisions:

(1) Where any industrial dispute exists or is apprehended the employer and the workmen may refer the dispute by a written agreement to arbitration. The presiding officer can be named as arbitrator by the parties.

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an even number of arbitrators, the agreement shall provide for the appointment of another person as *umpire* who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award.

(3) An arbitration agreement shall be in prescribed form and shall be signed by the parties in prescribed manner.

(4) A copy of the arbitration agreement shall be forwarded to

- Appropriate Government and
- The Conciliation Officer

The Appropriate Government shall within 1 month from the date of the receipt of such copy, publish the same in the Official Gazette

(5) The arbitrator shall investigate the dispute and submit arbitration award signed by him the Appropriate Government.

(6) Where an industrial dispute has been referred to arbitration, the Appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(7) Nothing in the Arbitration Act, 1940 shall apply to arbitrations Section 10A.

27. Distinguish between: Arbitration & Adjudication under the Industrial Dispute Act, 1947 [June 2009 (5 Marks)]

Ans.: Following are the main points of distinction between arbitration & adjudication:

Points	Arbitration	Adjudication
Meaning	In arbitration, with the consent of both the parties a private judge is appointed, who gives his decision relating to dispute.	Adjudication is the legal process of resolving a dispute. Adjudication can also refer to the legal process of hearing and settling a case.
Section	Section 10A provides for the settlement of industrial disputes by voluntary reference of such dispute to arbitration.	Section 10 makes provision for making reference of dispute to Labour Court, Tribunal for adjudication.

28. Explain the duties of Conciliation Officers under the Industrial Disputes Act, 1947. [Dec. 2021 (3 Marks)]

Ans.: As per Section 12 of the Industrial Dispute Act, 1947, duties of Conciliation Officers under the Industrial Disputes Act, 1947 are as follows:

- **To hold conciliation proceedings:** It is duty of Conciliation Officer to hold conciliation proceedings relating to Strikes and lockouts procedural matters of public utility services.
- **To investigate disputes:** Conciliation officers shall investigate the matters of the disputes and all matters affecting the merits and the right settlement.

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- **To induce parties for settlement:** Conciliation Officers shall induce the parties to come to a fair and amicable settlement of the dispute.
- **To send report to Appropriate Government:** Conciliation Officer has to send the report of settlement of dispute and memorandum of the settlement signed by the parties to the dispute to the Appropriate Government.
- **To send report for failure of settlement:** In case of failure of settlement of dispute in between parties, Conciliation Officer has to send to the Appropriate Government report of facts and circumstances relating to the disputes and in his opinion, a settlement could not be arrived at.
- **Time limit for submission of report:** A the conciliation officer shall be submit a report within 14 days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the Appropriate Government.

STRIKES & LOCK-OUTS

29. Write a short note on 'Strike' under the Industrial Disputes Act, 1947?

Ans.: Strike [Section 2(*q*)]: Strike means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, of a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

Important points relating strike:

- Strike is a weapon of collective bargaining in the armour of workers.
- Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner.
- Time factor or duration of the strike is immaterial. The purpose behind the cessation of work is irrelevant in determining whether there is a strike or not. It is enough if the cessation of work is in defiance of the employer's authority.
- Mere presence in the striking crowd would not amount to strike unless it can be shown that there was cessation of work.
- A concerted refusal or a refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike.
- Going on mass casual leave under a common understanding amounts to a strike.

30. Raman, while working in a factory, died a natural death following cardiac arrest. The fellow workers refused to work until his family members are summoned and dead body is sent to his native place. Does it amount to strike on their part? [Dec. 2004 (3 Marks)], [Dec. 2006 (3 Marks)]

Ans.: According to Section 2(*q*) of the Industrial Disputes Act, 1947, strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner.

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refuse to resume work, it amounts to a strike.

31. What is the difference between Strike & Lock-out under the Industrial Dispute Act, 1947? [June 2022 (3 Marks)]

Ans.: Following are the main points of distinction between strike & lock out:

Points	Strike	Lock-out
Meaning	Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner.	Lock-out means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.
Reason	Strike is a weapon of collective bargaining in the armour of workers.	Lock-out is a weapon of collective bargaining in the hands of employer.
Continuity of business	In strike the place of business may not be is closed down.	In lock-out, the place of business is closed down for the time being.
Wages	In strike workers are eligible for wages if strike is legal and justified.	In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified or illegal.

32. Discuss the different types of strikes that may take place in an industrial establishment. Which of these constitute strike under Section 2(q) of the Industrial Disputes Act, 1947? [June 2000 (8 Marks)], [Dec. 2000 (10 Marks)]

Ans.: Types of strike and their legality can be discussed as below:

(1) Stay-in, sit-down, pen-down or tool-down strike: In such strikes, the workmen after taking their seats refuse to do work. Even when asked to leave the premises, they refuse to do so. All such acts on the part of the workmen acting in combination, amount to a strike. Since such strikes are directed against the employer, they are also called **primary strikes.**

Where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work amounts to strike. If in pursuance of common understanding the employees enter the premises of the Bank and refuse to take their pens in their hands that would no doubt be a strike. [*Punjab National Bank Ltd.* v. *All India Punjab National Bank Employees Federation*]

(2) Go-slow: Go-slow does not amount to strike, but it is a **serious case of misconduct.** It is not a legitimate weapon in the armour of labour.

Go-slow which is a deliberate delaying of production by workmen pretending to be engaged in the factory, is one of the most pernicious practices that discontented and disgruntled workmen sometimes resort to. Thus, while

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delaying production and thereby reducing the output, the workmen claim to have remained employed and entitled to full wages. [*Bharat Sugar Mills Ltd.* v. *Jai Singh*]

Apart from this, 'go-slow' is likely to be much more harmful than total cessation of work by strike. During a go-slow much of the machinery is kept going on at a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, 'go-slow' has always been considered a serious type of misconduct.

(3) **Sympathetic strike:** Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike. This is an unjustifiable invasion of the right of employer who is not at all involved in the dispute.

The management can take disciplinary action for the absence of workmen.

However, in *Ramalingam* v. *Indian Metallurgical Corporation*, it was held that such cessation, of work will not amount to a strike since there is no intention to use the strike against the management.

(4) **Hunger strike:** Some workers may resort to fast on or near the place of work or residence of the employer. If it is peaceful and does not result in cessation of work, it will not constitute a strike. But if due to such an act, even those present for work, could not be given work, it will amount to strike. [*Pepariach Sugar Mills Ltd.* v. *Their Workmen*]

(5) **Work-to-rule:** Since there is no cessation of work, it does not constitute a strike.

33. The workman of Bharat Chemicals went on go-slow strike to compel the management to concede to their demands. The management contended that go-slow is a serious misconduct and initiated disciplinary action against the erring workmen. Is the action of the management justified?
[June 2009 (4 Marks)]

Ans.: Go-slow does not amount to strike, but it is a **serious case of misconduct.** It is not a legitimate weapon in the armour of labour.

In *Bharat Sugar Mills Ltd.* v. *Jai Singh,* it was held that go-slow which is a deliberate delaying of production by workmen pretending to be engaged in the factory, is one of the most pernicious practices that discontented and disgruntled workmen sometimes resort to. Thus, while delaying production and thereby reducing the output, the workmen claim to have remained employed and entitled to full wages. Hence, action of management to initiate disciplinary action against the erring workmen is justified.

34. The workmen went on sympathetic strike by absenting themselves from work in support of the workmen belonging to some other employer. The management intends to take disciplinary action against those workmen. Is the intention of the management justified and legal? [Dec. 2009 (4 Marks)]

Ans.: Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike. This is an unjustifiable invasion of the right of employer who is not at all involved in the dispute. The management can take

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Metallurgical Corporation, it was held that such cessation of work will not amount to a strike since there is no intention to use the strike against the management.

35. Write a short on: 'Prohibition of strikes & Sock-outs in public utility service' under the Industrial Dispute Act, 1947

Ans.: Prohibition of strikes and lock-outs [Section 22]: It provides for following additional safeguards for the smooth and uninterrupted running of public utility services and to obviate the possibility of inconvenience to the general public and society.

(1) Employees in a public utility service shall not go on strike in breach of contract:

- (*a*) Without giving to the employer notice of strike, within **6 weeks before striking**, or
- (*b*) Within **14 days of giving of such notice**, or
- (*c*) Before the expiry of the date of strike specified in any such notice or
- (*d*) During the pendency of any conciliation proceedings before a conciliation officer and 7 days after the conciliation proceedings.

(2) Employer of public utility service shall not lock-out:

- (*a*) Without giving them notice of lock-out, **within 6 weeks before locking-out** or
- (*b*) Within **14 days of giving such notice** or
- (*c*) Before the expiry of the date of lock-out specified in any such notice as aforesaid, or
- (*d*) During the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conciliation proceedings.

The notice of strike & lock-out shall be given in manner.

If an employer receives from such notices or gives to such notices to employees, he shall within 5 days report to the Appropriate Government or other prescribed.

Section 22 explained:

- In case of public utility service, employee have to give at least 14 days notice for strike. The notice is valid only if strike commences within in 6 weeks, otherwise fresh notice is required.
- Similarly employer cannot declare lock-out without giving at least 14 days notice. The notice is valid only if lock-out commences within in 6 weeks, otherwise fresh notice is required.
- Strike & lock-out cannot be commenced during the pendency of conciliation proceedings and 7 days after the conciliation proceedings.

36. A group of workmen from Bharat Railways Catering were having some conflict of interest with their management. They filed a case in front of labour commissioner to decide upon their issues and concerns. During the pendency of the matter, they suddenly went on strike against the management stopping

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notice before the strike in terms of Industrial Dispute Act, 1947.
[Dec. 2018 (5 Marks)]

Or

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?
[Dec. 2020 (3 Marks)]

Ans.: As per Section 22 of the Industrial Dispute Act, 1947, employees in a public utility service shall not go on strike in breach of contract:

(*a*) Without giving to the employer notice of strike, within **6 weeks before striking**, or

(*b*) Within **14 days of giving of such notice**, or

(*c*) Before the expiry of the date of strike specified in any such notice or

(*d*) During the pendency of any conciliation proceedings before a conciliation officer and 7 days after the conciliation proceedings.

Thus, in case of public utility service, employees have to give at least 14 days notice for strike. The notice is valid only if strike commences within in 6 weeks, otherwise fresh notice is required.

According to Section 23, workmen employed in industrial establishment shall not go on strike in breach of contract during the pendency of matter before Board or Labour Court or Tribunal or during pendency of arbitration proceedings and 2 months after the conclusion of such proceedings.

According to Section 24, a strike or lock-out shall be illegal if it is commenced or declared in contravention of Section 22 or 23.

Considering the above provision, the strike commenced by workmen of Bharat Railways Catering is illegal.

37. Write a short on: General prohibition of strikes & lock-outs under the Industrial Dispute Act, 1947
[Dec. 2011 (5 Marks)]

Or

A, an employer in a public utility service, declare a lock-out during the pendency of conciliation proceedings before a conciliation officer. Is the lock-out legal under the Industrial Dispute Act, 1947?
[June 1997 (5 Marks)]

Ans.: General prohibition of strikes and lock-outs [Section 23]: Workmen employed in industrial establishment shall not go on strike in breach of contract and employer of such workmen shall not declare a lock-out:

- During the pendency of conciliation proceedings before a Board and 7 days the conclusion of such proceedings.
- During the pendency of proceedings before a Labour Court/Tribunal and 2 months after the conclusion of such proceedings.

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months after the conclusion of such proceedings

- During any period in which a settlement or award is in operation.

Thus, declaration of lock-out by employer in a public utility service during the pendency of conciliation proceedings before a conciliation officer is illegal as it is in contravention of Section 23 of the Industrial Dispute Act, 1947.

38. Explain the provisions of the Industrial Dispute Act, 1947 relating to illegal strikes and lock-out. [June 2001 (9 Marks)]

Or

Define 'strikes'. When strike is illegal under the Industrial Dispute Act, 1947? [June 1996 (5 Marks)]

Ans.: Illegal strikes and lock-outs [Section 24]: A strike or lock-out shall be illegal if:

(*a*) It is commenced or declared in contravention of **Section 22** or **23** or

(*b*) It is continued in contravention of an order made under **Section 10(*3*)** or **Section 10A(*4A*)**.

Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of reference of the dispute to a Board, an arbitrator, a Labour Court or Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, if such strike or lockout was not in contravention of the provisions of this Act or the continuance was not prohibited under Sections 10(3)/10A(4A).

A lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Prohibition of financial aid to illegal strikes and lock-outs [Section 25]: No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

39. The management of an industrial establishment declared an unjustified lock-out due to the illegal and unjustified strike by a section of the workers. Later on when the strike was called off, the management did not pay wages for the lock-out period. Is the action of the management justified and legally tenable? Give reasons. [Dec. 2012 (4 Marks)]

Ans.: According to Section 24 of the Industrial Dispute Act, 1947, a lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal. Hence, the action of the management is not justified and legally not tenable.

40. With reference to the leading cases and relevant legal provisions distinguish between 'justified strikes' and 'illegal strikes'. [Dec. 1994 (10 Marks)]

Ans.: Justified/Unjustified Strike: Whether strike is justified or unjustified will depend upon the fairness and reasonableness of the demands of workers. If workmen go on strike without contravening statutory requirements, in support of their demands, the strike will be justified. In the beginning strike was justified but later on workmen indulged in violence, it will become unjustified.

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of Sections 22, 23 & other provisions of the Industrial Dispute Act, 1947.

Judicial views:

- The justification of strikes has to be viewed from the stand point of fairness and reasonableness of demands made by workmen and not merely from stand point of their exhausting all other legitimate means open to them for getting their demands fulfilled. [*Matchwell Electricals of India* v. *Chief Commissioner*]
- If the strike was resorted to by the workers in support of their reasonable, fair and *bona fide* demands in peaceful manner, then the strike will be justified. Where it was resorted to by using violence or acts of sabotage or for any ulterior purpose, then the strike will be unjustified. [*Gujarat Steel Tubes Ltd.* v. *Gujarat Steel Tubes Majdoor Sabha*]
- The Supreme Court held that the law has made a distinction between a strike which is illegal and one which is not, but it has not made distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. Therefore, an illegal strike is always unjustified. [*Indian General Navigation and Rly. Co. Ltd.* v. *Their Workmen*]
- If the strike is followed by lockout and *vice versa*, and both are unjustified. The Court evolved the doctrine of "apportionment of blame" to solve the problem. According to this doctrine, when the workmen and the management are equally to be blamed, the Court normally awards half of the wages. [*India Marine Service Pvt. Ltd.* v. *Their Workman*]
- It is well settled that in order to entitle the workmen to wages for the period of strike, strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike is justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case, it is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitled them to wage for the strike period. [*Crompton Greaves Limited* v. *Workmen*]

41. Distinguish between: Legal Strike & Justified Strike.
[June 2010 (5 Marks)]

Ans.: Following are the main points of distinctions between legal strike & illegal strike:

Points	Legal Strike	Justified Strike
Meaning	When strike is called complying with the provisions of Section 22, 23 & other provisions of the Industrial Dispute Act, 1947, it is called legal strike.	Whether strike is justified or unjustified will depend upon the fairness and reasonableness of the demands of workers. If workmen go on strike without contravening statutory requirements, in support of their demands, the strike will be justified.
Wages	Workers are entitled to wages for the legal strike if it is justified and conducted in peaceful manner.	Workers cannot claim wages for justified strike unless it is legal strike.

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Interdependence	Every legal strike is not necessarily a justified strike.	Every justified strike is not necessarily a legal strike.

42. An employee was engaged in a strike, which was declared legal and justified. He claimed wages for strike period. Can he do so? **[June 2002 (3 Marks)]**

Ans.: In *Crompton Greaves Ltd* v. *The Workmen*, it was held that workmen are entitled to wages for the period of strike, if strike is legal as well as justified.

In *Syndicate Bank* v. *Umesh Nayak*, it was held that where the strike is legal but at the same time unjustified, the workers are not entitled for wages for the strike period.

In given case employee can claim wages as strike was legal and justified.

43. The workers in a factory went on strike. The strike was legal. The employer deducted wages for the strike period on the ground that the legality of strike did not always exempt the workers from deduction of their wages for the period of strike. Was the employer's action justified? **[June 2008 (3 Marks)]**

Ans.: The payment of wages for the strike period will depend upon whether the strike is justified or unjustified. This also depends upon several factors such as service conditions of workman, the cause which led to strike, the urgency of cause or demand of workman, the reason for not resorting to dispute settlement machinery under the Act or service rules/regulations etc.

No wages are payable if the strike is illegal or it is unjustified.

In *Syndicate Bank* v. *Umesh Nayak*, it was held that where the strike is legal but at the same time unjustified, the workers are not entitled for wages for the strike period.

Thus, in given case if strike is justified then workers are entitled to wages and if strike is unjustified then they are not entitled to wages.

44. The management without holding any inquiry terminated the services of certain workmen who had merely participated in an illegal strike. Is the action of the management justified? **[Dec. 2004 (3 Marks)]**

Ans.: It was held in *Indian General Navigation & Rly. Co.* v. *Their Workmen*, that if workmen go on strike, it does not justify the management in terminating their services. In any case if allegations of misconduct have been made against them, those allegations have to be enquired into by charging them with specific acts of misconduct and giving them an opportunity to defend themselves at the enquiry.

Thus, terminating service of employee who had merely participated in an illegal strike without proper inquiry is not justified.

UNFAIR LABOUR PRACTICE & PENALTIES

45. What do you understand by unfair labour practices? What is penalty for it under the Industrial Dispute Act, 1947?

Ans.: According to Section 2(*ra*), Unfair Labour Practice means any of the practices specified in the **Fifth Schedule**.

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under the Trade Unions Act, 1926 or not, shall not commit any unfair labour practice.

As per Section 25U, any person who commits any unfair labour practice shall be punishable:

- With Imprisonment for a term which may extend to **6 months** *or*
- With fine which may extend to **₹1,000** *or*
- With *both*.

46. What are the penalties for illegal strikes and lock-outs under the Industrial Dispute Act, 1947?

Ans.:

(*a*) **Penalty for illegal strikes [Section 26(*1*)]:** Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal, shall be punishable –

- With imprisonment for a term which may extend to **1 month** *or*
- With fine which may extend to **₹50** *or*
- With **both**.

(*b*) **Penalty for illegal lock-outs [Section 26(*2*)]:** Any employer who commences, continues, or otherwise, acts in furtherance of a lock-out which is illegal, shall be punishable –

- With imprisonment for a term which may extend to **1 month** *or*
- With fine which may extend to **₹1,000** *or*
- With **both**.

(*c*) **Penalty for giving financial aid to illegal strikes and lock-outs [Section 28]:** Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable –

- With imprisonment for a term which may extend to **6 months** *or*
- With fine which may extend to **₹1,000** *or*
- With **both**.

UNIT II – INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

OBJECTS, APPLICABILITY & DEFINITIONS

47. Write a short note on: Objects of the Industrial Employment (Standing Orders) Act, 1946 [June 2002 (5 Marks)]

Ans.: Objects of the Industrial Employment (Standing Orders) Act, 1946 are:

(1) To require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

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Schedule to the Act, applicable to all workers irrespective of their time of appointment.

(3) To prevent employer from changing the conditions of employment to detriment or to the prejudice of rights and interests of employee.

(4) To maintain industrial peace and harmony.

48. State the applicability of the Industrial Employment (Standing Orders) Act, 1946. [Dec. 1996 (3 Marks)]

Ans.: Scope & Applicability [Section 1(3)]: The Act extends to the whole of India and applies to every industrial establishment employing **100 or more workmen** on any day of the preceding 12 months. However, the Appropriate Government may giving **not less than 2 months notice** by notification in the Official Gazette, apply the provisions of the Act to any industrial establishment employing less than 100 employees.

Non-Applicability [Section 1(*4*)]: The Act does not apply to:

(1) Any industry to which provisions of Chapter VII of the Bombay Industrial Relations Act, 1946, apply.

(2) Any industrial establishment to which provisions of Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 apply.

However, notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, the provisions of the Act shall apply to all industrial establishments under the control of the Central Government.

Act not to apply to certain industrial establishments [Section 13B]:

Nothing in the Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the Appropriate Government in the Official Gazette, apply.

49. An industrial establishment, having 70-80 workmen on regular pay roll, used to engage 30-40 workmen on temporary basis to meet the exigencies of work. Is it mandatory for the establishment to have its standing orders certified under the Industrial Employment (Standing Orders) Act, 1946? [Dec. 2003 (5 Marks)]

Ans.: As per Section 1(3) of the Industrial Employment (Standing Orders) Act, 1946, the Act applies to every industrial establishment employing **100 or more workmen** on any day of the preceding 12 months.

As per the facts given in case, total number of workman *i.e.* workmen on regular pay roll and workmen employed on temporary basis exceeds 100 hence it is mandatory for the establishment to have its standing orders certified under the Industrial Employment (Standing Orders) Act, 1946.

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Ans.: Industrial Establishment [Section 2(*e*)]: Industrial Establishment means:

(*i*) Industrial establishment as defined by Section 2(*ii*) of the Payment of Wages Act, 1936.

(*ii*) Factory as defined by Section 2(*m*) of the Factories Act, 1948.

(*iii*) Railway as defined by Section 2(*4*) of the Indian Railways Act, 1890.

(*iv*) The establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen. (*i.e.* contractor)

51. What are the matters to be provided in the standing orders under the Industrial Employment (Standing Orders) Act, 1946?
[Dec. 1999 (3 Marks)], [Dec. 2007 (5 Marks)]

Ans.: Standing Orders [Section 2(*g*)] Standing Orders means rules relating to matters set out in the Schedule to the Act.

'Standing Orders' are conditions of employment which normally covers the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc. It helps to minimizing friction between the management and workers in industrial undertakings.

Matters to be provided in standing orders under the Act (as per schedule to the Act):

1. Classification of workmen, *e.g.* whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

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52. State the provisions relating to certification & modification of draft standing order under the Industrial Employment (Standing Orders) Act, 1946.
[June 1994 (7.5 Marks)], [Dec. 1995 (7.5 Marks)]

Or

State the condition for certification of standing orders. Can certified standing orders be modified? **[Dec. 2001 (6 Marks)]**

Or

Write a short note on: Procedure for certification of standing orders
[June 2003 (5 Marks)]

Ans.: Following are the provisions relating to certification & modification of draft standing order:

(1) **Submission of draft standing orders [Section 3]:** Within 6 months from the date on which Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer **5 copies** of the draft Standing Orders proposed by him for adoption in that establishment.

Such draft Standing Orders shall be in conformity with the **Model Standing Orders** and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.

The draft Standing Orders shall be accompanied by a statement containing prescribed particulars of the workmen employed including the name of the trade union.

If the industrial establishments are of similar nature, a group of employers owning those industrial establishments may submit a joint draft of Standing Orders subject to such prescribed conditions.

(2) **Conditions for certification of Standing Orders [Section 4]:** Standing Orders shall be certifiable if:

(*a*) Provision is made for every matter stated in the Schedule to the Act.

(*b*) Standing Orders are in conformity with the provisions of the Act.

(3) **Certification of Standing Orders [Section 5]:** On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy to the trade union of the workmen or where there is no trade union, then to the workmen in prescribed manner together with a notice requiring objections from the workmen in the draft Standing Orders.

These objections are required to be submitted to him within 15 days from the receipt of the notice. On receipt of such objections he shall provide an opportunity of being heard to the workmen or the employer and will make amendments.

A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within 7 days of the certification.

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(4) **Register of Standing Orders [Section 9]:** It empowers the certifying Officer to file a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying on payment of the prescribed fee.

53. How the certifying officer does bring reasonableness and fairness in the standing orders? [June 1997 (5 Marks)]

Ans.:

- It is a duty of the Certifying Officer, to consider the reasonableness and fairness of the Standing Orders before certifying the same.
- The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act.
- If the Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same.
- The Certifying Officer has a mandatory duty to discharge and act in a quasi-judicial manner. Where a matter is not included in the Schedule and the concerned appropriate Government has not added any such item to the Schedule, neither the employer has a right to frame a Standing Order enabling him to transfer his employees nor does the Certifying Officer have jurisdiction to certify the same. The consent of the employees to such standing orders would not make any difference. [*Air Gases Mazdoor Sangh, Varanasi* v. *Indian Air Gases Ltd.*]

OTHER PROVISIONS

54. Who can file the appeal against the order of the Certifying Officer?

Ans.: Appeals [Section 6]: Provisions relating to appeal are as follows:

(1) **Who can file appeal:** The order of the Certifying Officer can be challenged by any –

- Employer
- Workman
- Trade union
- Other prescribed representatives of the workmen.

(2) **Time limit:** They can file an appeal before the appellate authority **within 30 days** from the date on which copies are sent to employer and the workers representatives.

(3) **No further appeal:** The decision of appellate authority is final and cannot be further challenged.

(4) **Confirmation or modification in standing order:** Appellate authority has the power to confirm the Standing Orders as certified by the Certifying Officer or to amend them. The appellate authority is required to send copies of the Standing Orders as confirmed or modified by it, to the employer or workers representatives within 7 days of its order.

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Or

Terms of standing orders or of service contracts, which one will have binding effect under the Industrial Employment (Standing Orders) Act, 1946? **[Dec. 1997 (3 Marks)]**

Ans.: Effect of certification of Standing Orders: Standing orders are statutorily imposed condition of service. Standing Orders are binding on employer & employee. Once standing order are certified under the Act, they override any terms and condition of employment.

Standing orders when certified become statutory part of service between employer and employee and they govern the relationship between the parties.

If there is inconsistency between 'Standing Order' & 'Appointment Letter', the provisions of Standing Order will prevail. [*Eitcher Goodearth Ltd.* v. *R K Soni*]

56. Can the certified standing orders framed by KMP & Company under the Industrial Employment (Standing Orders) Act, 1946 be treated merely as employer's instruction to workers? **[Dec. 1998 (3 Marks)]**

Ans.: Standing orders are statutorily imposed condition of service. Standing Orders are binding on employer & employee. Once standing order are certified under the Act, they override any terms and condition of employment.

Standing orders when certified become statutory part of service between employer and employee and they govern the relationship between the parties.

Thus, it is incorrect to say that Standing Orders be treated as employer's instruction to workers.

57. Write a short note on: Date of operation of Standing Orders

Ans.: Date of operation of standing orders [Section 7]: Standing Orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives.

If an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives.

58. Enumerate the provisions of the Industrial Employment (Standing Orders) Act, 1946 relating to duration and modification of standing orders.

Ans.: Duration and modification of standing orders [Section 10]: Once Standing Orders are certified, an employer is prohibited to modify except on agreement between the employer and the workmen or a trade union or other representative body of the workmen.

Such modification can be made only after expiry of 6 months from the date on which the Standing Orders were last modified or certified.

Procedure for modification: For modification of standing orders application has to be made to Certifying Officer. Such application should be accompanied by 5 copies of the proposed modifications and copy of an agreement between the employer and the workmen for modification.

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59. In XYZ Ltd. the employer and the workmen have come to an agreement for a modification in the existing standing orders. Is the certifying officer bound to accept the modification? [June 2000 (3 Marks)]

Ans.: As per Section 10 of the Industrial Employment (Standing Orders) Act, 1946, there is a prohibition on an employer to modify the standing orders once they are certified except on agreement between the employers and the workmen.

In above case there is an agreement between the employer and the workmen of the XYZ Ltd. and hence the standing orders can be modified. But such modification will not take effect until the expiry of 6 months from the date on which standing order were last modified.

The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act. If the Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same.

SPECIAL PROVISIONS RELATING TO STANDING ORDERS

60. As the works manager of ABC Co. refused to give the workers a copy of the certified standing orders or even show it to them, the workers struck work. Was this step of the works manager justified? [June 1999 (3 Marks)]

Ans.: As per Section 9 of the Industrial Employment (Standing Orders) Act, 1946, the text of the Standing Orders as finally certified under this Act shall be prominently posted by the employer in **English** and in **the language understood by the majority of his workmen** on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments where the workmen are employed.

Hence, the step of the works manager is not justified.

61. Write a short note on: "Payment of subsistence allowance" under the Industrial Employment (Standing Orders) Act, 1946
[Dec. 2002 (3 Marks)], [June 2006 (5 Marks)]

Or

Rakshit was suspended for an alleged act of misconduct and an inquiry was instituted against him. He did not appear before the inquiry officer on the ground that the allegations leveled against him were false. The inquiry could not be completed even after the lapse of six months. He files a case for grant of the subsistence allowance. Will he succeed? [Dec. 2005 (3 Marks)]

Ans.: Payment of subsistence allowance [Section 10A]: Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to workman the subsistence allowance at following rate:

(*a*) **50%** of the last wages for the **first 90 days** of suspension and

(*b*) **75%** of last wages for the **remaining period** of suspension.

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attributable to the conduct of such workman then he is not entitled subsistence allowance payable after first 90 days.

Any dispute regarding subsistence allowance should be referred to the Labour Court constituted under the Industrial Disputes Act, 1947.

However, if the provisions relating to payment of subsistence allowance under any other law for the time being in force are more beneficial, then the provisions of such other law shall be applicable.

In given case an alleged act of misconduct is not acceptable to Rakshit and such delay is not due his fault and hence he is entitled to receive subsistence allowance as per Section 10A.

62. As per the provisions of the Industrial Employment (Standing Orders) Act, 1946, a workman was entitled to subsistence allowance on suspension. However, the certified standing orders provided that the workman has to mark his attendance during the suspension to claim subsistence allowance. The workman argued that he could not be compelled to attend the office during the period of suspension. Decide.
[Dec 2004 (3 Marks)], [June 2005 (3 Marks)]

Ans.: As per Section 10A of the Industrial Employment (Standing Orders) Act, 1946, where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to workman the subsistence allowance at prescribed rate.

In *BPCL* v. *Petroleum Employees Union & others*, it was held that subsistence allowance given to a workman cannot be curtailed by the standing orders. Hence the suspended workman cannot be compelled to attend the office during the period of suspension.

63. A worker was placed under suspension and disciplinary proceedings were initiated against him. The proceedings could not be completed in 90 days after which the suspended worker demanded increase in subsistence allowance under the Industrial Employment (Standing Orders) Act, 1946. Will he succeed? **[June 2008 (3 Marks)]**

Ans.: As per Section 10A of the Industrial Employment (Standing Orders) Act, 1946, where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to workman the subsistence allowance at following rate:

(*a*) **50%** of the last wages for the **first 90 days** of suspension and

(*b*) **75%** of last wages for the **remaining period** of suspension.

If delay in the completion of disciplinary proceedings against such workman is directly attributable to the conduct of such workman then he is not entitled subsistence allowance payable after first 90 days.

The worker will succeed in procuring an increase in subsistence allowance as the delay in disciplinary proceeding is on account of management default and not the workmen. Thus, he is entitled to receive subsistence allowance as per Section 10A.

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ment. Can the prescribed model standing orders be deemed to be applicable in that case? [June 2001 (3 Marks)]

Or

When does a model standing order become applicable? [Dec. 2002 (3 Marks)]

Ans.: Temporary application of model standing orders [Section 12A]: 'Model Standing Orders' are automatically applicable till the Industrial establishment prepares its own standing orders. In case where there are no certified Standing Orders applicable to an industrial establishment, the prescribed Model Standing Orders shall be deemed to be adopted and applicable.

Judicial View:

Where there are two categories of workers, daily rated and monthly rated but the certified Standing Orders are in respect of daily rated workmen only, then Model Standing Orders can be applied to monthly rated workmen [*Indian Iron & Steel Co. Ltd. v. Ninth Industrial Tribunal*]

65. A question arises as to the application of a standing order certified under the Industrial Employment (Standing Orders) Act, 1946. State the course of action to be taken by the parties concerned in order to get solution.

Ans.: Interpretation of Standing Orders [Section 13A]: If any question arises as to the application or interpretation of certified standing orders, any employer or workman or a trade union or other representative body of the workmen may refer it to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947.

The Labour Court to which the question is so referred, shall decide it after giving the parties an opportunity of being heard. Such decision shall be final and binding on the parties.

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CHAPTER 18

LAW OF WAGES

UNIT I – PAYMENT OF WAGES ACT, 1936

DEFINITIONS

1. A person engaged in a private motor transport company is paid wages of ₹ 20,700 p.m. Will the Payment of Wages Act, 1936 be applicable in this case?

Ans.: As per Section 1(6), the Payment of Wages Act, 1936 shall not apply to wages payable of a wage period which is **more than ₹ 24,000 a month.**

Hence, the Act applies to a person engaged in a private motor transport company who is paid wages of ₹ 20,700 p.m.; as wages are less than ₹ 24,000 per month.

Note: *The Government vide notification dated August 28, 2017 revised the wages threshold for the applicability of the Payment of Wages Act, 1936.*

2. What is meant by 'Wages' according to the Payment of Wages Act, 1936?

Ans.: Wages [Section 2(vi)]: Wages means all remuneration (*whether by way of salary allowances or otherwise*) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled by payable to a person employed in respect of his employment or of work done in such employment. It includes —

(*a*) Remuneration payable under award or settlement or order of a Court.

(*b*) Remuneration for overtime or holidays or leave.

(*c*) Additional remuneration whether called *a bonus* or by any other name

(*d*) Termination remuneration

(*e*) Any sum under any scheme framed under any law for the time being in force,

Wages does not include:

(1) Bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration under terms of employment or which is not payable under any award or settlement or order of a Court.

(2) Value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service.

(3) Contribution to PF and interest accrued thereon.

(4) Travelling allowance/travelling concession.

(5) Sum paid to defray special expenses.

(6) Gratuity payable other than those specified in (*a*) above.

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3. Who is responsible for payment of wages under the Payment of Wages Act, 1936?

Ans.: Responsibility for payment of wages [Section 3]: Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act:

However, in respect of certain establishment persons responsible for the payment wages is given below:

(*a*) **Factories:** Person named as the 'Manager' under the Factories Act, 1948.

(*b*) **Industrial or other establishments:** Person responsible to the employer for the supervision and control of the industrial or other establishments.

(*c*) **Railways:** Person nominated in this behalf for the local area concerned by the railway administration.

(*d*) **Persons employed through contractor:** A person designated by contractor who is directly under the charge of contractor.

(*e*) **Other cases:** A person designated by the employer as a person responsible for complying with the provisions of the Act.

4. What are the provisions relating to fixation of wage-periods under the Payment of Wages Act, 1936? Can wages be paid on daily or weekly basis?

Ans.: Fixation of wage-periods [Section 4]: Every person responsible for the payment of wages shall fix wage-periods in respect of which such wages shall be payable. No wage-period shall **exceed 1 month.**

In other words wages can be paid daily, weekly, fortnightly or monthly basis but wage period cannot be more than a month.

5. What is the time for payment of wages under the Payment of Wages Act, 1936?

Ans.: Time of payment of wages [Section 5]: The wages of every person employed in:

(*a*) Any railway, factory or industrial or other establishment upon or in which less than 1,000 are employed, shall be paid before the expiry of the **7th day of next wages period,**

(*b*) Any other railway, factory or industrial or other establishment, shall be paid before the expiry of the **10th day of next wages period.**

Where the employment of any person is terminated, the wages shall be paid before the expiry of the **2nd working day from the termination of employment.**

All payments of wages shall be made on a **working day.**

6. Mr. Sham was terminated from employment by the employer on 25.11.2023. Personnel Manager directed him to collect his wages earned on 1.12.2023. Mr. Sham objected to the date. State legal provisions as to the date of payment.

Ans.: As per Section 5 of the Payment of Wages Act, 1936, where the employment of any person is terminated, the wages shall be paid before the expiry of the **2nd**

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working day from the termination of employment. Hence, his Chief's objection to the date is correct and acceptable.

7. Sagar Gupta was appointed as Manager in the Factory of XYZ Ltd. He request the legal department of the company to send him note regarding payment of wages to the workers. Advice him suitably keeping in view the provisions of the Payment of Wages Act, 1936.

Ans.: Mode of payment of wages [Section 6]: All wages must be paid –

(*i*) in coin or currency notes *or*

(*ii*) by cheque *or*

(*iii*) by crediting them into his bank account.

However, the relevant Central or State Government may specify certain industrial or other establishments where the employer should pay his employees only by: (*i*) cheque; or (*ii*) crediting the wages in his bank account.

8. A factory is having 400 employed persons and covered under the Payment of Wages Act, 1936. It wants to fix the wage period as one and half month and make the payment of wages within 10 days after the last day of the wage period. Is it permitted under the Payment of Wages Act, 1936?
[June 2023 (5 Marks)]

Ans.: Fixation of wage-periods [Section 4]: Every person responsible for the payment of wages shall fix wage periods in respect of which such wages shall be payable. No wage period shall **exceed 1 month.**

In other words wages can be paid daily, weekly, fortnightly or monthly basis but wage period cannot be more than a monih.

Time of payment of wages [Section 5]: The wages of every person employed in:

(*a*) Any railway, factory or industrial or other establishment upon or in which less than 1,000 are employed, shall be paid before the expiry of the **7th day of next wages period**.

(*b*) Any other railway, factory or industrial or other establishment, shall be paid before the expiry of the **10th day of next wages period.**

Where the employment of any person is terminated, the wages shall be paid before the expiry of the **2nd working day from the termination of employment.**

All payments of wages shall be made on a **working day.**

Considering above provisions, answer to given case is as follows:

(*i*) A factory in given case cannot fix wage period of one and half month. It has to adopt wage period of one month.

(*ii*) Since factory employs 400 persons, it has to pay wages to its workers 7th day of next month.

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9. Explain the deductions that can be made from the wages of an employee under the Payment of Wages Act, 1936.
[Dec. 2021 (3 Marks)], [Dec. 2022 (3 Marks)]

Ans.: Deductions from wages [Section 7(*1*)]: The wages of an employed person shall be paid to him without deductions of any kind *except those authorized by or under the Act.*

***Explanation* I:** Every payment made by the employed person to the employer or his agent shall, for the purposes of the Act, be deemed to be a deduction from wages.

***Explanation* II:** Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, shall not be deemed to be a deduction from wages, namely:

(*i*) The withholding of increment or promotion (*including the stoppage of increment at an efficiency bar*).

(*ii*) The reduction to a lower post or time scale or to a lower stage in a time scale.

(*iii*) Suspension.

Permissible deduction [Section 7(*2*)]:

Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

- Fines.
- Absence from duty.
- Damage to or loss of goods or for loss of money where such damage or loss is directly attributable to his neglect or default.
- House-accommodation supplied by the employer.
- Amenities and services supplied by the employer.
- Recovery of advances including advances for travelling allowance or conveyance allowance, and the interest due or for adjustment of over-payments of wages.
- Recovery of loans made from any fund constituted for the welfare of labour and the interest due in respect thereof.
- Recovery of loans granted for house-building or other purposes and the interest due in respect thereof.
- Income-tax payable.
- Deductions required to be made by order of a court or other authority competent to make such order.
- Subscriptions to, and for repayment of advances from any PF.
- Payments to approved co-operative societies or to a scheme of insurance maintained by the Indian Post Office.
- Deductions made with the written authorization of the person employed for payment of any premium on his life insurance policy to the LIC or for the purchase of securities of the Government of India or State Government or

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savings scheme of any such government.

- Deductions made with the written authorization of the employed person, for the payment of his contribution to any fund constituted or fees payable by him for the membership to a trade union registered under the Trade Union Act, 1926.
- Payment of insurance premium on Fidelity Guarantee Bonds.
- Recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes.
- Recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and cranage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise.
- Recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default.
- Deductions made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other authorized funds.
- Contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

Maximum deduction: The total amount of deductions which may be made under in any wage-period from the wages of any employed person shall not exceed **50% of such wages.** In case of payments to co-operative societies total amount of deductions shall not exceed **75% of wages.**

Note: ***Students are expected to write at least five to eight points of permissible deductions.***

10. Works Manager has deducted ₹ 5,000 from the wages towards the cost of tools and raw material supplied to workers for the purpose of employment. Does it amount to deductions from wages under the Payment of Wages Act, 1936?

Ans.: The wages of an employed person shall be paid to him without deductions of any kind *except those authorized by or under the Act.*

Deduction from the wages payable to employee can be made only for those sums that are covered under Section 7(*2*) of the Payment of Wages Act, 1936.

Deduction on account of tools and raw material is not covered under Section 7(*2*). Hence, action of Works Manager is not correct.

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11. The increment of an employee was due in April. He would have received an additional wages of ₹ 1,000 in the wages to be paid in May. The employer withheld the increment. Does it amount to deductions from wages under the Payment of Wages Act, 1936?

Ans.: As per *Explanation* II to Section 7(*1*) of the Payment of Wages Act, 1936, withholding the increment or promotion does amount to deductions from wages, hence there is no contravention of any provisions of the Act.

12. An employer made alteration in the wage structure as a result of which certain allowances previously paid to an employee were stopped. However total wages were not less than before. Will the action stated above amounts to 'deduction' under the Payment of Wages Act, 1936?

Ans.: The wages of an employed person shall be paid to him without deductions of any kind *except those authorized by or under the Act*.

Stopping of allowances will not amount to deduction if total wages are same to the previously paid wages. Hence, it does not amount to 'deduction' within the meaning of Section 7 of the Payment of Wages Act, 1936.

13. An employed person has taken a loan of ₹ 2 lakh from a co-operative society approved by the government. The employer makes a deduction of 80% of wages payable to him in a wage period towards repayment of the loan. Is the action of the employer valid?

Ans.: The wages of an employed person shall be paid to him without deductions of any kind *except those authorized by or under the Act*.

The total amount of deductions under section 7 in any wage-period from the wages of any employed person shall not exceed **75% of wages** for payments to co-operative societies.

In given case employer has deducted 80% of wages; hence action of employer is not valid.

14. While working on a machine, a worker accidentally drops a valuable testing appliance which becomes defective. The employer deducts the value of the appliance from the wages of the worker. Is the deduction justified under the Payment of Wages Act, 1936? [Dec. 2007 (3 Marks)]

Ans.: The wages of an employed person shall be paid to him without deductions of any kind *except those authorized by or under the Act*.

As per Section 7(*2*), deductions from the wages of an employed person shall be made only in accordance with the provisions of the Act, and it may be for damage to or loss of goods or for loss of money where such damage or loss is directly attributable to his neglect or default. Accidental loss is not covered by section 7(*2*) and hence the action of employer is not justified.

15. Which type of 'fines' can be imposed under the Payment of Wages Act, 1936?

Ans.: Fines [Section 8]:

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for any acts and omissions without the previous approval of the Appropriate Government or prescribed authority.

(2) **Notice for acts and omissions:** A notice specifying acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or at the prescribed place or places.

(3) **Opportunity of showing cause:** Fine shall be imposed until employee or worker has been given an opportunity of showing cause against the fine.

(4) **Amount of fine:** Total amount of fine which may be imposed in any one wage-period on any employed person **shall not exceed 3% of the wages** payable to him in respect of that wage period.

(5) **No fine for young person:** Fine shall not be imposed on any employed person who is under the age of **15 years.**

(6) **Limitation on recovery:** Fine imposed on any employed person shall not be recovered in instalments or after the **expiry of 90 days** from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) **Register of fines:** All fines and realizations shall be recorded in a register in prescribed form and all such realizations shall be applied only for prescribed purposes beneficial to the employees or workers as approved by prescribed authority.

16. An employee earning ₹ 4,000 p.m. was fined ₹ 150 for act duly specified by a notice exhibited in the premises work place. The employee opposed the deduction contending that amount deducted should not be more than ₹ 120 as per provisions of the Payment of Wages Act, 1936. Comment.

Ans.: As per Section 8 of the Payment of Wages Act, 1936, the total amount of fine which may be imposed in any one wage-period on any employed person **shall not exceed 3% of the wages** payable to him in respect of that wage-period. Thus, maximum fine that can be imposed is ₹ 120 (4,000 × 3%). Hence, action of employer is in contravention of provision of Section 8.

RECORDS & CLAIMS

17. State the provisions relating to maintenance of registers and records under the Payment of Wages Act, 1936.

Ans.: Maintenance of registers [Section 13A]: Every employer shall maintain registers and records giving particulars of:

(*a*) Persons employed by him

(*b*) Work performed by them

(*c*) Wages paid to them

(*d*) Deductions made from their wages

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(f) Other prescribed particulars.

Every register and record should be preserved for a period of **3 years** after the date of the last entry.

18. State the provisions relating to appointment authorities hear and decide for claims arising out of deductions from the wages or delay in payment of the wages under the Payment of Wages Act, 1936.

Ans.: Authorities to hear and decide claims [Section 15(*1*)]: The Appropriate Government by notification in the Official Gazette may appoint following authorities hear and decide for claims arising out of deductions from the wages or delay in payment of the wages:

(*a*) Commissioner for Workmen's Compensation.

(*b*) Officer of the Central Government exercising functions as

- Regional Labour Commissioner
- Assistant Labour Commissioner with at least 2 years experience.

(*c*) Officer of the State Government not below the rank of Assistant Labour Commissioner with at least 2 years experience.

(*d*) A presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947.

(*e*) Other officer with experience as a Judge of a Civil Court or a Judicial Magistrate.

The Appropriate Government may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them.

19. Who can present application under the provisions of the Payment of Wages Act, 1936 seeking relief against unauthorized deductions from wages? Is there time limit prescribed for the presentation of such application?

Ans.: Person entitled make application [Section 15(*2*)]: An application for claims arising under the Act can be made following persons:

(1) Employee himself

(2) Any legal practitioner

(3) Any official of a registered trade union authorized in writing

(4) Any Inspector under the Act

(5) Any other person acting with the permission of the authority appointed under section 15(1).

Time limit for making application: Every such application shall be presented **within 12 months** from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be.

Delayed application: Any application may be admitted beyond the period of 12 months if the applicant satisfies that he had **sufficient cause** for not making the application within such period.

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from wage under the Payment of Wages Act, 1936?

Ans.: Procedure for determining claims [Section 15(3)]: When any application is made for claims arising under the Act, the Authority shall hear the applicant, employer or person responsible for the payment of wages.

After enquiry the Authority can direct the refund of the amount deducted, or the payment of the delayed wages, together with compensation not exceeding **10 times** the amount deducted.

In case of delayed payments **maximum compensation** can be ₹ 3,000 but not less than ₹ **1,500**.

Even where the deducted or delayed wages are paid before the disposal of the application, the Authority may direct the payment of compensation but not exceeding ₹ **2,000**.

Time limit for disposal of case: A claim under the Act shall be disposed by the Authority of as far as possible within a period of **3 months** from the date of registration of the claim.

The period of 3 months may be extended if both parties to the dispute agree.

21. What is amount of penalty for making malicious or vexatious claims as per the Payment of Wages Act, 1936?

Ans.: Penalty for making malicious or vexatious claims [Section 15(4)]: If the Authority hearing an application is satisfied that the application was either malicious or vexatious, the authority may direct a penalty **not exceeding** ₹ **375** be paid to the employer or person responsible for the payment of wages or by the person presenting the application.

UNIT II – MINIMUM WAGES ACT, 1948

OBJECTS & DEFINITIONS

22. Write a short note on: Object of the Minimum Wages Act, 1948

Or

Write a short note on: Philosophy behind the enactment of the Minimum Wages Act, 1948. [Dec. 2008 (3 Marks)], [June 2011 (5 Marks)]

Ans.: Objects of passing the Minimum Wages Act, 1948 are as follows:

(1) To prevent exploitation of labour.

(2) To provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as 'Scheduled Employments'.

(3) To empower the Appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries.

(4) To empower the Appropriate Government to give effect to other provisions of the Act.

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Or

B, an out worker prepared goods at his residence and supplied them to the employer for the sale round the year. He claimed minimum wages as fixed under Minimum Wages Act, 1948. The employer refused to do so. Decide.
[June 1997 (5 Marks)], [June 2010 (4 Marks)]

Ans.: Employee [Section 2(*i*)]: Employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed.

Employee includes an outworker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale purpose of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises, net being premises under the control and management of that person.

Employee also includes an employee declared to be an employee by the Appropriate Government.

Any members of Armed Forces of the Union are not employee under the Act.

An out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of Minimum Wages Act, 1948. Hence, such out worker is entitled to minimum wages. [*Loknath Nathu Lal* v. *State of Madhya Pradesh*]

24. Who is 'Employer' under the Minimum Wages Act, 1948?
[Dec. 1996 (3 Marks)]

Ans.: Employer [Section 2(*e*)]: Employer means any person who employs directly or through contractor employees in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act, and includes:

(*a*) **In a factory:** Person named as Manager under section 7 of Factories Act, 1948.

(*b*) In any scheduled employment under the control of:

(*i*) **Central Government:** The person or authority appointed for the supervision and control of employees. Where no person of authority is so appointed, the Head of the Department.

(*ii*) **Local Authority:** The person appointed for the supervision and control of employees. Where no person is so appointed, the Chief Executive Officer of the local authority.

(*c*) **In any other case:** Any person responsible to the owner for the supervision and control of the employees or for the payment of wages.

Scheduled Employment [Section 2(*g*)]: Scheduled employment means an employment specified in the Schedule or any process or branch of work forming part of such employment.

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25. Discuss briefly provisions relating to fixation and revision of minimum rates of wages under the Minimum Wages Act, 1948.

Ans.: Fixation of minimum rates of wages [Section 3(1)]:

(*a*) **Authority to fix minimum wages:** Appropriate Government shall fix the minimum rates of wages, payable to employees in an employment specified in Part I & II of the Schedule.

(*b*) **Minimum wages for employment covered in Part I:** The minimum rates of wages must be fixed for the entire State, no parts of the State being omitted.

(*c*) **Minimum wages for employments specified in Part II:** The minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether.

(*d*) **When minimum wages are not required to be fixed:** If there are **less than 1,000 employees in the whole State** in any scheduled employment the Appropriate Government may not fix minimum rates of wages for that scheduled employment. However, when number increases 1,000 or more Appropriate Government shall fix minimum wage rate.

The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities. [*Basti Ram* v. *State of A.P.*]

Revision of minimum wages: Appropriate Government may review minimum rate of wages at intervals **not exceeding 5 years**. This means that minimum wages can be revised earlier than 5 years but gap between two revisions should not be more than 5 years.

26. Write a short on: Manner of fixation/revision of minimum wages [Dec. 2009 (5 Marks)], [June 2012 (5 Marks)]

Ans.: Types of minimum rate of wages [Section 3(2)]: The Appropriate Government may fix minimum rate of wages as:

(*a*) Minimum time rate

(*b*) Minimum piece rate

(*c*) Guaranteed time rate for those employed in piece work

(*d*) Over time rate.

Different minimum rates of wages [Section 3(3)]: Different minimum rates of wages may be fixed for:

(1) Different scheduled employments

(2) Different classes of work for same scheduled employments

(3) Adults, adolescents, children and apprentices

(4) Different localities.

Wage period for fixing minimum rates of wages: Minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

(*i*) By the hour

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(*iii*) By the month

(*iv*) By such other large wage periods as may be prescribed.

Where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated.

27. What do you understand by 'minimum rate of wages' as provided under the Minimum Wages Act, 1948?

Ans.: Minimum rate of wages [Section 4]: Any minimum rate of wages may consist of:

(*i*) Basic rate of wages (+) cost of living allowance.

(*ii*) Basic rate of wages (+) cost of living allowance (+) cash value of the concession for supplies of essential commodities at concessional rates.

(*iii*) All inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions.

Cost of living allowance and cash value of the concessions in respect of supplies of essential commodities at concessional rates shall be computed by the Competent Authority at specified intervals in accordance with directions specified by the Appropriate Government.

28. Describe the procedure for fixing and revising minimum wages under the Minimum Wages Act, 1948.
[June 2009 (5 Marks)], [Dec. 2010 (5 Marks)] [Dec. 2011 (5 Marks)]

Ans.: Procedure for fixing and revising minimum wages [Section 5]: The Appropriate Government can follow *either of the two methods* described below.

(1) Committee method: The Appropriate Government may appoint committee to hold enquiries and advise it in respect of such fixation or revision of minimum wages. After considering the advice of the committee the Appropriate Government shall fix or revise the minimum rates of wages by notification in the Official Gazette.

Committee appointed under section 5 is only an advisory body and that Government is not bound to accept its recommendations. [*Edward Mills Co. v. State of Ajmer*]

(2) Notification method: As per this method the Appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected and give 2 months time for making representation by the interested parties. After considering all the representations and consulting with the Advisory Board, the Appropriate Government shall fix or revise the minimum rates of wages by notification in the Official Gazette.

The minimum wage rates shall come into force from the date specified in the notification. If no date is specified, wage rates shall come into force on the expiry of **3 months** from the date of the issue of the notification.

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29. State the structure of Advisory Board as provided under the Minimum Wages Act, 1948. **[June 2000 (3 Marks)]**

Or

Does the Minimum Wages Act, 1948 make it compulsory to have representative of any particular industry or of each and every scheduled employment on the Advisory Board. **[June 1998 (3 Marks)]**

Ans.: Constitution of Advisory Board [Section 7]: The Advisory Board is constituted by the Appropriate Government for the purpose of:

- Coordinating the work of committees appointed under section 5.
- Advising the Appropriate Government for fixing and revising of minimum rates of wages.

Composition of Advisory Board [Section 9]: The Advisory Board shall consist of persons to be nominated by the Appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman by the Appropriate Government.

Judicial views:

- It is not necessary that the Advisory Board shall consist of representatives of any particular industry or of each and every scheduled employment. [*B.Y. Kashatriya* v. *S.A.T. Bidi Kamgar Union*]
- An independent person means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed. Mere fact that a person happens to be a Government servant will not divert him of the character of the independent person. [*State of Rajasthan* v. *Hah Ram Nathwani*]

30. Write a short on: Central Advisory Board under the Minimum Wages Act, 1948

Ans.: Constitution of Central Advisory Board [Section 8]: Central Government *shall* appoint a Central Advisory Board for the purpose of advising the Central and State Government in the matters of:

(*a*) Fixation and revision of minimum rates of wages and other matters

(*b*) For coordinating work of the Advisory Boards.

Composition of Central Advisory Board [Section 9]: The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman by Central Government.

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31. Can minimum wages be paid in kind as per the Minimum Wages Act, 1948?

Ans.: Wages in kind [Section 11]:

(*a*) Minimum wages shall be paid in cash.

(*b*) Minimum wages can also be paid in kind if there is custom and approved by Appropriate Government.

(*c*) Supply of essential commodities at concessional rates can also be authorized by Appropriate Government.

(*d*) Cash value of wages in kind and value of concessional supplies of essential commodities shall be estimated in the prescribed manner.

32. Can an establishment covered under the Minimum Wages Act, 1948 escape the liability of paying minimum wages to its employees.
[June 2001 (5 Marks)]

Or

A company was running into losses and was unable to pay the minimum rates of wages to its workers. The workers pleaded that the employer must pay them the minimum rates of wages. The employer (company) intends to go to the Court challenging the constitutional validity of the Minimum Wages Act, 1948. Will the company succeed? [June 2010 (4 Marks)]

Ans.: Payment of minimum rate of wages [Section 12]: It is to be noted that minimum wages must be paid irrespective of the extent of profits, the financial condition of the establishment.

The employer shall pay to every employee engaged in a scheduled employment wages which should not be less than the minimum wages fixed by the Appropriate Government.

Payment of less than the minimum wages notified by the Appropriate Government is an offence.

Thus, even a company running into losses has to pay minimum rates of wages to its workers in accordance with the provisions of the Minimum Wages Act, 1948

FIXATION OF NORMAL WORKING HOURS & OVERTIME PAYMENT

33. What are the provisions relating to fixation of normal working hours for normal working day under the Minimum Wages Act, 1948?
[June 1998 (3 Marks)]

Or

Is it compulsory to fix minimum wages on the basis of standard normal working hours under the Minimum Wages Act, 1948?
[June 1999 (3 Marks)]

Ans.: Fixation of normal working hours for normal working day [Section 13]:

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the purpose for which wages are fixed. Thus, the Appropriate Government may:

(*a*) Fix the number of working hours which shall constitute a normal working day, inclusive of specified interval.

(*b*) Provide a paid holiday in every period of 7 days.

(*c*) Provide for payment of work on a paid holiday at a rate not less than the overtime rate.

However, for following classes of employees the above provisions shall apply subject to such conditions as may be prescribed:

(*a*) Employees engaged on urgent or emergency work.

(*b*) Employees engaged in work in the nature of preparatory or complementary work.

(*c*) Employees whose employment is essentially intermittent.

(*d*) Employees engaged in any work which for technical reasons, has to be completed before the duty is over.

(*e*) Employees engaged in any work which could not be carried on except at times dependent on the irregular action of natural forces.

Judicial view:

There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely 48 hours a week. [*Benode Bihari Shah* v. *State of W.B.*]

34. How are wages for overtime paid under the Minimum Wages Act, 1948. [Dec. 1999 (2 Marks)]

Ans.: Overtime [Section 14]: When an employee works on any day in excess a normal working hours for a day, the employer shall pay him overtime rate fixed under this Act or under any other law of the Appropriate Government whichever is higher.

Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages.

35. How are the wages of worker who works less than normal working days paid under the Minimum Wages Act, 1948. [Dec. 1999 (2 Marks)]

Ans.: Wages of worker who works less than normal working days [Section 15]: Where the minimum day rate of wages has been fixed for an employee and if he works for period less than normal working hours, he shall be entitled to receive wages for that day as if he had worked for a full working day.

However, such employee shall not be entitled to receive wages for full normal working day:

(*i*) If his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work.

(*ii*) Such other cases and circumstances as may be prescribed.

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Ans.: Minimum time rate for piece work [Section 17]: Where an employee is engaged in work on piece work and minimum piece rate has not been fixed but minimum time rate has been fixed then such employee shall be paid minimum time rate in respect of each class of work.

RECORDS, AUTHORITIES, OFFENCES & PENALTIES

37. State the provisions relating to maintenance of registers and records under Minimum Wages Act, 1948.

Ans.: Maintenance of registers and records [Section 18]: The employer is required to maintain registers and records giving following particulars:

(*a*) Work performed by employees.

(*b*) Receipts given by employees to show that they have received minimum wages.

(*c*) Other prescribed particulars.

Every employer is also required to exhibit notices, in the prescribed form at the place of work.

Every employer is also required to maintain wage books or wage-slips in prescribed manner and the entries made therein will have to be authenticated by the employer or his agent.

38. Who can apply for a claim under the Minimum Wages Act, 1948?
[Dec. 1998 (3 Marks)]

Ans.: Who can apply for a claim [Section 20(2)]: Where an employee has any claim under the Act, then following person can make an application to prescribed authorities:

(*a*) Employee himself.

(*b*) Any legal practitioner.

(*c*) Any authorized official of a registered trade union.

(*d*) Any inspector with permission of Authority appointed under section 20(*1*).

Time limit for making application: Every such application shall be presented **within 6 months** from the date on which the minimum wages or other amount became payable.

Application beyond 6 month is allowed if **sufficient cause** is shown.

UNIT III – PAYMENT OF BONUS ACT, 1965

OBJECTS, APPLICABILITY & DEFINITIONS

39. Write a short note on: Object of the Payment of Bonus Act, 1965.
[June 2009 (5 Marks)]

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(1) To provide for the payment of bonus to persons employed in certain establishments.

(2) To maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment.

(3) To prescribe the maximum and minimum rates of bonus.

(4) To lay down the rules for computation of bonus.

(5) To make other provisions like eligibility, disqualification, recovery of bonus and offence & penalties etc.

40. State the applicability of the Payment of Bonus Act, 1965.

Ans.: Applicability [Section 1(3)]: The Payment of Bonus Act, 1965 shall apply to:

(*a*) Every factory.

(*b*) Every other establishment in which 20 or more persons are employed on any day during an accounting year.

The Appropriate Government may, after giving **not less than 2 months** notice in the Official Gazette, apply the provisions to any establishment or class of establishment employing less than 20. However, the number of persons so specified shall in no case be less than 10.

As per Section 1(5), an establishment to which the Act applies shall continue to be governed by this Act even if the number of persons employed therein falls below 20.

Application of certain law not barred [Section 39]: The provisions of the Act shall be in addition to and not in derogation of the Industrial Disputes Act, 1947, or any corresponding law relating to investigation and settlement of industrial disputes in force in a State.

41. Sewak is working in a social welfare institution. Will the Payment of Bonus Act, 1965 be applicable in his case? [Dec. 2001 (3 Marks)]

Ans.: As per Section 32 of the Payment of Bonus Act, 1965, employees of hospitals, chambers of commerce & social welfare institutions established not for purposes of profit are excluded from the application of from the Payment of Bonus Act, 1965.

Hence, Sewak is not entitled to bonus under the Payment of Bonus Act, 1965.

42. Explain 'Accounting year' of different types of establishments under the Payment of Bonus Act, 1965.

Ans.: Accounting year [Section 2(1)]: Accounting year means:

(1) In relation to a corporation: The year ending on the day on which the books & accounts of the corporation are to be closed & balanced.

(2) In relation to a company: The period for which profit & loss account is laid before AGM.

(3) In any other case: At the option of employer:

- Year from 1st April to 31st March.

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then such period will be accounting year.

It is to be noted that an option once exercised by the employer of clause (3) above then it shall not again be exercised without previous permission of the prescribed authority and upon such conditions as that authority may think fit.

This provision applies only to employer other than company or corporation.

Company can change their accounting year as per provisions of the Companies Act, 2013.

43. Define 'Salary' under the Payment of Bonus Act, 1965.

Ans.: Salary [Section 2(*21*)]:

(*a*) Salary or wage means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employment or of work done in such employment.

(*b*) Salary or wage includes dearness allowance (*i.e.* all cash payments paid to an employee on account of a rise in the cost of living).

Salary or wage does not include:

(1) Overtime remuneration

(2) Other allowances

(3) Value of house accommodation, light, water, medical attendance, other amenity, service, concessional supply of food grains or other articles

(4) Travelling concession

(5) Bonus including incentive, production and attendance bonus

(6) PF or ESI contributions

(7) Retrenchment compensation or any *ex-gratia* payment

(8) Gratuity or other retirement benefit

(9) Commission

***Explanation*:** Where an employee is given free food allowance or free food by his employer, it will be included in salary or wages of such employees.

44. Prakash Chandra is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year:

(*i*) Overtime allowance

(*ii*) Dearness allowance

(*iii*) Commission on sales

(*iv*) Employer's contribution towards pension fund

(*v*) Value of free food

Examine as to which of the above payments form part of "salary" of Prakash Chandra under the provisions of the Payment of Bonus Act, 1965.

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answer to given case is as follows:

Types of payment	Salary or not	Reasons
Overtime allowance	No	Excluded in definition of salary
Dearness allowance	Yes	Included in definition of salary
Commission on sales	No	Excluded in definition of salary
Employer's contribution towards pension fund	No	Excluded in definition of salary
Value of free food	Yes	Included in definition of salary

45. An employee contended that subsistence allowance given during the period of his suspension should be included in his total wages for the purpose of calculation of bonus entitlement. Will he succeed? [Dec. 2008 (4 Marks)]

Ans.: Salary [Section 2(*21*)]: *Please refer to Answer of Question No. 43.*

The contention of the employer is not tenable since subsistence allowance given during the period of suspension should not be included in the calculation of bonus since the same is not part of wage. [*Motor Industries Co.* v. *Poapt Murlidhar*]

46. Write a short note on: 'Employee' under the Payment of Bonus Act, 1965.

Or

Ram is working in a factory employing 30 persons. The gross salary of Ram is ₹ 20,000 per month. He has worked for 60 days in the year 2019-2020. In the light of provisions of Payment of Bonus Act, 1965, examine whether Ram is eligible for payment of bonus for the year 2019-2020.

[Dec. 2021 (3 Marks)]

Ans.: Employee [Section 2(*13*)]: Employee means any person (*other than an apprentice*) employed on a salary or wage **not exceeding ₹ 21,000 per month** in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

Who is entitled to bonus [Section 8]: every employee shall be entitled to bonus provided he has worked in the establishment for not less than 30 working days in that year.

In view of the above Ram is eligible for payment of bonus for the year 2019-2020 under the provisions of the Payment of Bonus Act, 1965.

ESTABLISHMENT

47. Explain meaning of 'Establishment' under the Payment of Bonus Act, 1965.

Or

Tokyo Ltd. carried on three business venture *viz.* manufacturing sugar, cement and heavy engineering machinery, locating in three different places in North India. They employed workmen on different units. One of these units

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basis of treating these three units as one establishment. Can the workmen succeed in getting bonus? [June 2000 (3 Marks)]

Ans.: The word 'Establishment' is not defined in the Act. As per Section 3 of the Payment of Bonus Act, 1965, where an establishment consists of different department or undertakings or branches, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus.

These will be treated as separate establishments if separate balance sheet and profit & loss account are prepared right from 1st year of establishing of that undertaking, department or branch. Establishment can be either in public sector or in private sector.

Considering above provisions, answer to given case is as follows:

(1) Various undertakings of the Tokyo Ltd. shall be treated as parts of the same establishment and workers of each undertaking are entitled to bonus on the basis of overall profit of the establishment.

(2) If Tokyo Ltd. has prepared separate balance sheet and profit & loss account right from the beginning treating all the three units as separate establishment then workers are not entitled to bonus on the basis of overall profit of the establishment. Workers can claim bonus only as per profits of the undertaking in which they are employed.

48. Explain meaning of "establishment in public sector" under the Payment of Bonus Act, 1965.

Or

In 2022, the Electronics Corporation, Public Sector establishment under the Department of Science & Technology, Government of Rajasthan starts to sell mobile sets manufactured by it, in addition to TV sets, so as to compete with private sector establishments of mobile sets in the market. The income from sale of mobile sets is 30% of the gross income of the Corporation. The employees of the Corporation went on strike to demand bonus. Decide, whether the demand of the employees is tenable under the provisions of the Payment of Bonus Act, 1965.

Would your answer be different, if the income from sale of mobile sets is only 10% of the gross income of the Corporation?

Ans.: Establishment in private sector [Section 2(*15*)]: Establishment in private sector means establishment which is not in public sector is.

Establishment in public sector [Section 2(*16*)]: Establishment in public sector means an establishment owned, controlled or managed by:

(*a*) A Government company as per the Companies Act, 2013.

(*b*) A Corporation in which 40% or more capital is held by:

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- the RBI *or*
- A corporation owned by the Government or the RBI.

Corporation: It means anybody corporate established by or under any Central Provincial or State Act but does not include a company or a co-operative society.

Application of Act to establishments in public sector in certain cases [Section 20]: If in any accounting year an establishment in public sector sells goods produced or manufactured or renders any services in competition with an establishment in private sector, and the income from such sale or services or both is not **less than 20% of the gross income** of the establishment in public sector for that year then the provision of the Act shall apply to such establishment in public sector as they apply in relation to establishment in private sector.

In the given case, the demand of the employees is acceptable in first case but not for second case.

ELIGIBILITY & DISQUALIFICATION FOR BONUS

49. Who is entitled to bonus under the Payment of Bonus Act, 1965?

Ans.: Eligibility for bonus [Section 8]: every employee shall be entitled to bonus provided he has worked in the establishment for **not less than 30 working days** in that year.

Computation of number of working days [Section 14]: An employee shall be deemed to have worked on following days in any accounting year:

(*a*) He has been laid-off under applicable law.

(*b*) He has been on leave with salary or wage.

(*c*) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment.

(*d*) Employee has been on maternity leave with salary or wage.

50. When is an employee disqualified from receiving bonus under the Payment of Bonus Act, 1965? [Dec. 1995 (5 Marks)]

Or

Does the bonus payable under the Payment of Bonus Act, 1965 carry with it the obligation of good behaviour of employees? When is an employee disqualified from receiving bonus under the? [June 1999 (3 Marks)]

Ans.: Disqualification for bonus [Section 9]: An employee shall be disqualified from receiving bonus, **if he is dismissed from service for**:

(*a*) Fraud *or*

(*b*) Riotous or violent behaviour while on the premises of the establishment *or*

(*c*) Theft, misappropriation or sabotage of any property of the establishment.

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company did not pay any bonus to the dismissed employee for the accounting year in which the dismissal took place. Is the action of the company justified? [June 2007 (3 Marks)], [Dec. 2007 (3 Marks)] [Dec. 2009 (3 Marks)]

Ans.: As per Section 9 of the Payment of Bonus Act, 1965, an employee shall be disqualified from receiving bonus under the Act, if he is dismissed from service for riotous or violent behaviour (*i.e.* misconduct) while on the premises of the establishment. Hence, the action of the company is justified.

52. Who amongst the following are eligible for bonus under the Payment of Bonus Act, 1965?

(*a*) Ward boy of district hospital

(*b*) Peons of a university

(*c*) Printers in newspapers press

(*d*) Pilots of Indian air force

(*e*) Cattle catchers of municipal corporation

(*f*) Teachers of St. XYZ Pvt. Sr. Secondary School [Dec. 1998 (5 Marks)]

Ans.: Considering various provisions of the Payment of Bonus Act, 1965, eligibility to receive bonus for given case is discussed below:

Types of persons	Eligibility	Reasons
Ward boy of district hospital	No	Excluded as per Section 32
Peons of a university	No	Excluded as per Section 32
Printers in newspapers press	Yes	Covered in definition of employee
Pilots of Indian air force	Yes	Covered in definition of employee
Cattle catchers of municipal corporation	No	Excluded under section 32
Teachers of St. XYZ Pvt. Sr. Secondary School	No	Excluded under section 32

53. Will it be lawful for the employer to deduct amount of loss from the amount of bonus payable to employee?

Or

Nilesh is an employee of a company. The amount of the bonus payable to Nilesh during the year 2023-2024 is ₹ 5,000, but the company paid him ₹ 3,000 only and a sum of ₹ 2,000 was deducted from bonus against the loss suffered by the company due to misconduct of Nilesh during the same accounting year. Nilesh files a suit against the company for recovery of the deducted amount. Decide whether Nilesh would be given any relief under the provisions of the Payment of Bonus Act, 1965? What will be your answer, if the losses are related to the accounting year 2021-2022?

Ans.: Deduction of certain amounts from bonus [Section18]: Where in any accounting year, an employee is found guilty of misconduct causing financial loss

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loss from the amount of bonus payable by him to the employee under the Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

Considering above provision Nilesh will not get any relief because employer has all right to deduct the said losses from the bonus of employee.

In the second case, the losses are related to the accounting year 2021-2022 while bonus is being paid for accounting year 2023-2024, hence employer has no right to deduct the losses from the bonus of employee.

COMPUTATION OF GROSS PROFIT, ALLOCABLE & AVAILABLE SURPLUS

54. How gross profit is calculated under the Payment of Bonus Act, 1965?

Ans.: Computation of gross profits [Section 4]: Gross profits derived by an employer from an establishment in respect of any accounting year shall be calculated

(*a*) **In the case of a banking company:** In the manner specified in the First Schedule.

(*b*) **In any other case:** In the manner specified in the Second Schedule.

55. How is 'available surplus' determined under the Payment of Bonus Act, 1965? [June 1995 (3 Marks)]

Ans.: Computation of available surplus [Section 5]: Following table shows how available surplus is calculated –

Particulars	₹
Gross profit as per **Section 4**	XXXX
(-) Prior charges allowable as per **Section 6**	(XXX)
- Depreciation as per Income-tax Act or the Agricultural Income-tax law	(XXX)
- Development rebate/investment allowance/development allowance (deductible under the Income-tax Act)	(XXX)
- Direct tax payable by the employer on his income, subject to Section 7	(XXX)
- Further sums as are specified in the **3rd Schedule**	XXXX
(+) Amount equal to Income-tax saved on bonus of earlier year	
Available surplus	XXXX

56. Explain 'Allocable Surplus' under the Payment of Bonus Act, 1965. [Dec. 1999 (3 Marks)], [June 2003 (5 Marks)]

Ans.: Allocable Surplus [Section 2(4)]: Allocable surplus means –

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In relation to a company (other than a banking company) which has not made the arrangements for the declaration & payment of the dividends in accordance with the provisions of Income-tax Act, 1961	67% of available surplus in an accounting year
In any other case	60% of available surplus

57. State the provisions regarding 'set on' & 'set off' of allocable surplus under the Payment of Bonus Act, 1965. [Dec. 2006 (3 Marks)]

Ans.: Set-on & set-off of allocable surplus [Section 15]:

(1) **Set-on:** If the allocable surplus exceeds the amount of maximum bonus then, the excess above 20% of the total salary or wage be carried forward for being set on in the succeeding accounting year up to 4th accounting year in the manner illustrated in the **4th Schedule**.

(2) **Set-off:** If there is no available surplus or the allocable surplus falls short of minimum bonus payable to the employees, then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year up to 4th accounting year in the manner illustrated in the **4th Schedule**.

MINIMUM & MAXIMUM BONUS

58. Write a short note on: Minimum Bonus

Or

During the accounting year 2023-2024, Stingy Ltd. to which the Payment of Bonus Act, 1965 applies, suffered heavy losses. The Board of directors decided not to pay any bonus to its employees. The employees moved the court for relief. Will they succeed? [Dec. 2005 (3 Marks)]

Ans.: Payment of minimum bonus [Section 10]: Every employer shall be bound to pay to every employee a minimum bonus which shall be higher of the following two amounts:

(*a*) **8.33%** of the salary or wage of the accounting year *or*

(*b*) **₹ 100** (**₹ 60** for an employee who has not completed 15 years of age)

Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed under Section 10. [*State* v. *Sardar Singh Majithia*]

Proportionate reduction in minimum bonus [Section 13]: The amounts of ₹ 100 or ₹ 60 are to be proportionately reduced if an employee has not worked for all the working days. This permissible only if amount of ₹ 100 or ₹ 60 exceeds 8.33% of salary.

59. Write a short note on: Maximum Bonus

Ans.: Maximum Bonus [Section 11]: Where for any accounting year, the allocable surplus exceeds minimum bonus the employer shall be bound to pay bonus which

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year subject to a maximum of **20% of such salary or wages.**

In computing the allocable surplus, the amount set-on or set-off shall be taken into account.

Calculation of bonus with respect to certain employees [Section 12]: For calculating the amount of minimum or maximum bonus, if the salary or wage of an employee exceeds ₹ 7,000 or the minimum wage for the scheduled employment, whichever is higher, the bonus payable to such employee shall be calculated as if his salary or wage were ₹ 7,000 or the minimum wage for the scheduled employment, whichever is higher.

Example: Tarun Kumar is employed on salary of ₹ 18,000 per month in XYZ Ltd. He is 'employee' as per Section 2(*13*) and eligible to received bonus as his salary does not exceed ₹ 21,000. However, for the purpose of calculating minimum and maximum bonus his salary will be restricted to ₹ 7,000.

Minimum Bonus = ₹ 7,000 × 12 × 8.3333% = ₹ 7,000

Maximum Bonus = ₹ 7,000 × 12 × 20% = ₹ 16,800

OTHER PROVISIONS

60. X is an employee in a Company. The amount of bonus payable to him during the year 2023-2024 is ₹ 14,000. The company deducted a sum of ₹ 4,000 against the "Puja Bonus" already paid to him during the said year and paid the remaining amount. X files a suit against the company for recovery of the deducted amount. Decide, under the Payment of Bonus Act, 1965, whether X would be given any relief?

Ans.: Adjustment of customary or interim bonus against bonus [Section 17]: Where in any accounting year—

(*a*) An employer has paid any *puja bonus* or other customary bonus to an employee; or

(*b*) An employer has paid a part of the bonus payable under the Act to an employee before the date on which such bonus becomes payable,

then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under the Act in respect of that accounting year and the employee shall be entitled to receive only the balance.

In given case Mr. X would not get any relief because employer is empowered to deduct ₹ 4,000 from the total bonus of ₹ 14,000.

61. On 1st January, 2024, Aryan Textiles Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limit of 30% of their salary/wages during the relevant accounting year. It was also agreed by the employees that they will not claim minimum bonus stated under Section 10 of the Payment of Bonus Act, 1965. As per the agreement the employees of Aryan Textiles Ltd. claimed annual bonus linked with production or productivity in the relevant

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moved to the court for relief.

Ans.: Payment of bonus linked with production or productivity [Section 31A]: Employer can pay the bonus linked with production or productivity if there is specific agreement or settlement with the employee. However, agreement or settlement whereby the employees relinquish their right to receive the minimum bonus shall be **null and void**.

Thus, the employees will also be entitled to claim minimum bonus as per Section 10 of the Payment of Bonus Act, 1965, even though they have relinquished such right as per the agreement.

Further it is to be noted that even if bonus is paid based on production or productivity, employees are not entitled to be paid bonus in excess of 20% of the salary or wage.

62. What is the time limit within which payment of bonus due to an employee under the Act, be paid?

Or

A Company could not pay bonus to its employee even after the expiry of six month form the close of its accounting year. Can the employees sue the employer for this reason? [June 2002 (3 Marks)]

Ans.: Time-limit for payment of bonus [Section 19]: All amounts payable to an employee by way of bonus under the Act shall be paid in cash by his employer:

(*a*) **If there is a dispute regarding payment of bonus pending before any authority:** Within **1 month** from the date on which the award becomes enforceable or the settlement comes into operation.

(*b*) **In any other case:** Within a period of **8 months** from the close of the accounting year.

The Appropriate Government or specified authority may on an application extend the said period of 8 months to such further period or periods as it thinks fit. However, the total period so extended shall not in any case exceed 2 years.

As per the facts given in case only 6 months have been passed, hence employees cannot sue the employer.

UNIT IV — EQUAL REMUNERATION ACT, 1976

63. Briefly indicate the purpose of enacting the Equal Remuneration Act, 1976. [June 1997 (2 Marks)]

Ans.: Objects of the Equal Remuneration Act, 1976 are follows:

(1) To provide payment of equal remuneration to men and women workers for same work or work of similar nature without any discrimination.

(2) To prevents discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment.

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nature'? [June 1999 (5 Marks)], [Dec. 2001 (5 Marks)]

Ans.: same work or work of a similar nature [Section 2(*h*)]: same work or work of a similar nature means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of woman are not of practical importance in relation to the terms and conditions of employment.

65. What are the duties of employer relating to payment of equal remuneration and recruitment under the Equal Remuneration Act, 1976? [Dec. 1995 (5 Marks)], [June 2000 (5 Marks)]

Or

Mohan and Meera both were employed in ABC Ltd. for the performing the same work. Mohan was getting remuneration at a higher rate. For complying with the legal provisions to pay equal remuneration for the same work, the employer reduced the rate of remuneration of Mohan. Was the step taken by the employer proper? [June 2001 (5 Marks)]

Ans.: Equal remuneration for equal work [Section 4]: It is the duty of the employer to pay same wages to the workmen of both sex performing same work and work of similar nature. Thus, employer is under duty to not to make discrimination while paying remuneration to men or women.

It should be noted that employer shall not reduce the rate of remuneration of any worker for the purpose of complying with the rule of equal remuneration.

Hence, the act of the employer reducing the remuneration of Mohan is legally wrong.

66. Can employer make discrimination against women while making recruitment for the same work or work of a similar nature? If so, under what circumstances and subject to what conditions? [Dec. 2000 (7 Marks)]

Ans.: No discrimination to be made while recruiting men and women [Section 5]: It is the duty of the employer, not make any discrimination against women while making recruitment for the same work or work of a similar nature.

Same rule applies in any condition of service subsequent to recruitment such as promotions, training or transfer.

This provision does not apply where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

These provisions are also not applicable when priority is to be given for reservation of:

- Scheduled Castes
- Scheduled Tribes
- Ex-servicemen
- Retrenched employees.

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CHAPTER 19 SOCIAL SECURITY LEGISLATIONS

UNIT I – EMPLOYEES STATE INSURANCE ACT, 1948

1. State the applicability of the Employees State Insurance Act, 1948.

Ans.: Applicability [Section 1(4)]: The ESI Act, 1948 shall apply to all factories including factories belonging to government **other than seasonal factories.**

In case of factories belonging to government, the Act shall not apply if employees are in receipt of benefits substantially similar or superior to the benefits provided under the ESI Act, 1948.

Extension [Section 1(5)]: The Appropriate Government may after giving 1 month notice extend the provisions of the Act to other establishments.

Under these enacting provisions, the Act has been extended by many State Governments to shops, hotels, restaurants, cinemas, including preview theatres, newspaper establishments, road transport undertakings, etc., employing **20 or more persons.**

It is not sufficient that 20 persons are employed in the shop. They should be employee as per Section 2(9) of the Act, getting the wages prescribed therein. [*ESIC* v. *M.M. Suri & Associates Pvt. Ltd.*]

Once the Act applies it continues to be applicable [Section 1(6)]: An establishment to which the ESI Act, 1948 applies shall continue to be governed by the Act even if the number of persons employed falls below the limit specified by or under the Act or the manufacturing process therein ceases to be carried on with the aid of power.

Registration [Section 2A]: Every factory or establishment to which the Act applies shall be registered within 15 days or within such period as may be specified in the regulations made in this behalf.

2. Write a short note on: Contribution under the Employees State Insurance Act, 1948.

Ans.: Contribution [Section 2(4)]: Contribution means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of the Act.

Currently, contribution is payable as follows:

- Employee's contribution is **0.75%** of wages.
- Employer's contribution is **3.25%** of wages.

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3. Who are dependants under the Employees State Insurance Act, 1948? [June 1996 (5 Marks)]

Ans.: Dependent [Section 2(6A)]: Dependent means any of the following relatives of a deceased insured person namely:

(*i*) Widow, a minor legitimate or adopted son who has not attained the age of 25 years, an unmarried legitimate or adopted daughter,

(*ii*) Widowed mother,

(*iii*) If wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years *and is infirm*;

(*i*) If wholly or in part dependent on the earnings of the insured person at the time his death:

(*ii*) Parent other than a widowed mother,

(*iii*) Minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,

(*iv*) Minor brother or an unmarried sister or a widowed sister if a minor, or if widowed daughter-in-law,

(*v*) Minor child of a pre-deceased son,

(*vi*) Minor child of a pre-deceased daughter where no parent of the child is alive or,

(*vii*) Paternal grandparent if no parent of the insured person is alive.

4. Write a short note on: Employment Injury [June 1999 (5 Marks)], [Dec 2011 (5 Marks)]

Ans.: Employment injury [Section 2(8)]: Employment injury means a personal injury to an employee caused by accident or an occupational disease arising **out of and in the course of his employment**, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

An insurable employment means an employment in factory or establishment to which the Act applies.

5. Will the injury compensation claim of X, a worker, succeed under the Employees State Insurance Act, 1948, when he suffered fracture of hands on being beaten by striking workers for working in the employers factory on his own risk despite the strike? [June 1998 (3 Marks)]

Ans.: An employee is entitled to benefits under the ESI Act, 1948 for personal injury caused to him by an accident arising out of and in the course of his employment.

The facts of the case are similar to *ESI Corporation Indore* v. *Babulal*, wherein it was held that, if injury arose out of employment where a workman attending duty in spite of threats by persons giving call for strike and was assaulted (*physical attack*)

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Mr. X will succeed in getting benefits under the ESI Act, 1948.

6. Mohan meets with an accident on a public road on his way to place of employment. Does it amount employment injury entailing him to benefits under the ESI Act, 1948? [June 2003 (3 Marks)]

Or

An employee was on his way to the factory. He met with an accident one kilometer away from the place of his employment. He pleaded that the injury was caused by accident "arising out of and in the course of employment" and claimed employment injury benefits under the Employees State Insurance Act, 1948. Will the employee succeed? [June 2010 (3 Marks)]

Ans.: An employee is entitled to benefits under the ESI Act, 1948 for personal injury caused to him by an accident arising out of and in the course of his employment.

The facts of the case are similar to *Regional Director ESI* v. *Francis de Costa,* wherein it was held that mere road accident on a public road while the employee was on his way to place of employment cannot he said to have its origin in his employment in the factory. Therefore, Mohan is not entitled to benefits under the ESI Act 1948.

7. A worker was injured by his negligent act while knocking the belt of a moving pulley. Does it amount to an employment injury under the ESI Act, 1948? [June 2005 (3 Marks)]

Ans.: An employee is entitled to benefits under the ESI Act, 1948 for personal injury caused to him by an accident arising out of and in the course of his employment.

The facts of the case are similar to *Jayanthilal Dhanji Co.* v. *ESI Corporation,* wherein it was held that the injury caused due to negligence of employee amounts to an employment injury. Hence, worker is entitled to benefits under the ESI Act 1948.

8. Bahadur, an employee deputed by the management to participate in a football match, met with an accident resulting in his death while on his way to the playground. Is it an employment injury under the Employees State Insurance Act, 1948? [June 2007 (3 Marks)]

Ans.: An employee is entitled to benefits under the ESI Act, 1948 for personal injury caused to him by an accident arising out of and in the course of his employment.

Theory of notional extension: According to theory of notional extension of employment, in certain circumstances, an employer is liable for injury to his workman even when the employee is away from the premises at the time of injury. If the presence of the employee concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment.

The theory of national extension will be applied in this case and injury to Bahadur in football match is employment injury. Hence, Bahadur is entitled to benefits under the ESI Act 1948.

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9. Does the benefits payable under the ESI Act, 1948 protect employees working for wages in the Indian Air Force? [June 1998 (3 Marks)]

Ans.: The definition of 'employee' as given in Section 2(9) of the ESI Act, 1948 excludes only member of the Indian Naval, Military or Air Forces and not other employees working for wages.

Thus, employees working for wages in the Indian Air Force are covered by definition of 'employee' as per Section 2(9) and are entitled to benefits of the ESI Act, 1948.

10. Muskan Theatre is maintaining a canteen and a cycle stand through private contractors. Regional Director, ESI Corporation sent notices to the management of the theatre for contribution of the employees engaged in the canteen and cycle stand. The management contends that they are not employees but are the workmen of the contractor. Hence, the management is not liable. Will the management succeed in its contention? [Dec. 2002 (3 Marks)], [Dec. 2006 (3 Marks)], [June 2009 (3 Marks)]

Ans.: The facts of the case are similar to *Royal Talkies Hyderabad* v. *ESIC,* wherein it was held that the two operations namely keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre and the workers engaged therein are covered by the definition of 'employee' as given in Section 2(9) of the ESI Act, 1948.

Hence, theatre owner is liable as a principal employer for the payment of ESI contribution in respect of workers employed in canteen and a cycle stand.

11. Distinguish between: Principal Employer & Immediate Employer. [Dec. 2009 (5 Marks)], [June 2010 (5 Marks)]

Ans.: Principal Employer [Section 2(*17*)]: Principal employer means the following:

(1) **In a factory:** Owner or occupier of the factory and includes the managing agent, the legal representative of a deceased owner or occupier and a person named as the 'Manager' under the Factories Act, 1948

(2) **In any establishment under the control any Government:** The authority appointed by such Government in this behalf or where no authority is so appointed the head of the Department.

(3) **In any other establishment:** Any person responsible for the supervision and control of the establishment.

Immediate Employer [Section 2(*13*)]: Immediate employer in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory, or an establishment to which the Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor.

12. Write a short note on: Permanent Disablement & Temporary Disablement under the ESI Act, 1948. [Dec. 1995 (5 Marks)]

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disablement means such disablement of a permanent nature, as reduced the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.

Every injury specified in **Part II** of the **Second Schedule** to the Act shall be deemed to result in permanent partial disablement.

Permanent Total Disablement [Section 2(*15B*)]: Permanent total disablement means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.

Permanent total disablement shall be deemed to result from:

- Every injury specified in **Part-I** of the **Second Schedule**.
- Any combination of injuries specified in **Part-II**, where the aggregate percentage of the loss of earning capacity amounts to **100% or more**.

Temporary Disablement [Section 2(*21*)]: Temporary disablement means a condition resulting from an employment injury which requires medical treatment and renders an employee as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury.

13. While fixing total remuneration, the employer included travelling allowance as part of the remuneration of an employee. The employee claimed that the employer has to include travelling allowance also for the purpose of payment of contribution towards ESI fund. Will he succeed? [June 2006 (3 Marks)]

Or

Visual Electronics Ltd. sells household consumer durables such as TV, washing machines, electric stoves, etc., of various manufacturers in its sales outlet. While delivering these items to the homes of the customers, it deputes its employees to install and explain the salient features of these items. It pays its employees an additional amount of defray for the actual travelling expenses. The ESIC demanded contribution on this additional payment including travelling expenses under the head 'wages'. Is the demand of ESIC justified? [June 2012 (4 Marks)]

Ans.: ESI contribution has to be paid on specified percentage on wages. Hence, it is essential to know the meaning of wages.

Wages [Section 2(*22*)]: Wages means all remuneration paid or payable in cash to an employee if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or lay-off and other additional remuneration if any, paid at intervals not exceeding 2 months *but does not include*:

(*a*) PF contribution

(*b*) Travelling allowance/concession

(*c*) Sum paid to defray special expenses

(*d*) Gratuity payable on discharge

2(22) of the ESI Act, 1948. Hence, ESI contribution is not payable on travelling allowance and contention of employee is not correct.

14. Lecktronics Ltd. is an establishment covered under the Employees State Insurance Act, 1948. The salesmen of the company were paid a commission @ 10% of the sales done by them every month. The ESI Inspector asked the employer to deposit contributions (the sum of money payable to the ESI Corporation by the principal employer in respect of an employee) in respect of commission paid. Is he justified? Give reasons. [Dec. 2012 (4 Marks)]

Ans.: According to Section 2(22) of the ESI Act, 1948, wages includes additional remuneration if any, paid at intervals not exceeding 2 months. As per the facts given in a case, company is paying commission (*i.e.* additional remuneration) every month; hence for the purpose of calculation of contribution, commission will form part of wages. Thus, contention of ESI Inspector is correct and justified.

15. What does medical benefit council do under the Employees State Insurance Act, 1948? [Dec. 1996 (3 Marks)]

Ans.: Constitution of Medical Benefit Council [Section 10]: The Central Government is empowered to constitute a Medical Benefit Council.

Duties of Medical Benefit Council [Section 22]: Duties of the Medical Benefit Council are as follows:

(*a*) To advise the Corporation and Standing Committee on matters relating to administration of medical benefit, the certification for the grant of benefit and other matters.

(*b*) To have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance and

(*c*) To perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

16. Write a short note on: Employees State Insurance Fund

Ans.: Employees State Insurance Fund [Section 26]:

- All contributions and all other money received on behalf of the Corporation shall be paid into a Fund called the Employees State Insurance Fund which shall be held and administered by the Employees State Insurance Corporation (ESIC).
- The ESIC may accept grants, gifts, donations from the Central or State Governments, local authority, or any individual or body whether incorporated or not, for all, or any of the purposes of the Act.
- A Bank account in the name of Employees State Insurance Fund shall be opened with the RBI or any other bank approved by the Central Government. Such account shall be operated on by such officers who are authorized by the Standing Committee with the approval of the ESIC.

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the Employees State Insurance Act, 1948.
[June 2010 (5 Marks)], [June 2012 (5 Marks)], [Dec. 2012 (5 Marks)]

Ans.: Purposes for which the Fund may be expended [Section 28]: Fund shall be expended only for the following purposes:

(1) **Benefits & medical treatment:** Payment of benefits and provisions of medical treatment and attendance to insured persons and defraying the charge, and costs in connection therewith.

(2) **Fees and allowances of various bodies:** Payment of fees and allowances to members of the ESIC, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils.

(3) **Salaries & allowance of ESIC:** Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the ESIC and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of the Act.

(4) **Maintenance of hospitals:** Establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and payment of medical benefit families of insured persons.

(5) **Contribution to State Government:** Payment of contribution to any State Government, local authority or any private body or individual towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the ESIC.

(6) **Costs incurred by ESIC:** Defraying the cost (including all expenses) of auditing the accounts of the ESIC and of the valuation of the assets and liabilities.

(7) **Costs incurred by ESI Courts:** Defraying the cost (including all expenses) of Employees Insurance Courts set up under the Act.

(8) **Sums under contract:** Payment of any sums under any contract by the ESIC or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf.

(9) **Sums payable under any decree, order or award:** Payment of sums under any decree, order or award, of any court or tribunal against the ESIC or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims instituted or made against the ESIC.

(10) **Charges incurred in civil or criminal proceedings:** Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under the Act.

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(11) **Health & welfare of insured persons:** Defraying expenditure within the limits prescribed, on measure for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and

(12) **Other purposes:** Such other purposes as may be authorized by the ESIC with the previous approval of the Central Government.

18. What are the provisions under the ESI Act, 1948 relating to payment of contribution?

Ans.: All employees to be insured [Section 38]: All employees in factories or establishments to which ESI Act, 1948 applies shall be insured under the Act.

Contributions [Section 39]: Provisions relating to payment of contribution are as follows:

(1) Contribution payable shall comprise employer's contribution and employee's contribution and shall be paid to the Corporation.

(2) Contributions shall be paid at such rates as may be prescribed by the Central Government. Presently rate of contribution are as follows:

- Employee's contribution is **0.75%** of wages.
- Employer's contribution is **3.25%** of wages.

(3) All contributions shall be payable for wage period.

(4) Contributions payable of each wage period shall fall due on the last day of the wage period.

(5) If any contribution is not paid by the principal employer within prescribed period then employer shall be liable to pay simple interest at 12% p.a. or at prescribed higher rate, till the date of its actual payment. However higher interest should not exceed the lending rate of interest charged by any scheduled bank. Any interest recoverable as stated above may be recovered as an *arrear of land revenue*.

19. Who is required to pay ESI contribution?

Ans.: Principal employer to pay contributions in the first instance [Section 40]: The principal employer to pay contribution for all employees whether employed directly or through contractor. However, employer can recover from the employee the employee's contribution by deduction from his wages.

The principal employer also has to bear the expenses of remitting the contributions to the ESI Corporation.

Recovery of contribution from immediate employer (contractor) [Section 41]: Principal employer who has paid contribution in respect of an employee employed by or through an immediate employer is entitled to recover the amount of contribution so paid (both employers and employees contribution) from the immediate employer either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer.

However the immediate employer is entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages.

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or through him as provided in the Regulations and submit the same to the principal employer before the settlement of any amount payable. He is not required to have separate account with ESI.

20. What are the various benefits available to an employee under the ESI Act, 1948? [Dec. 2005 (5 Marks)], [Dec. 2009 (5 Marks)]

Ans.: Benefits [Section 46]: The insured persons and their dependants shall be entitled to the following benefits on prescribed scale:

(*a*) Periodical payments in case of sickness certified by medical practitioner.

(*b*) Periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy.

(*c*) Periodical payment to an insured person suffering from disablement as a result of employment injury.

(*d*) Periodical payment to dependants of insured person.

(*e*) Medical treatment and attendance on insured person.

(*f*) Payment of funeral expenses on the death of insured person at the prescribed rate.

Where a person is entitled to more than one of the benefits, he shall be entitled to choose which benefit he shall receive.

Benefit not assignable or attachable [Section 60]: The right to receive any payment of any benefit under this Act shall not be transferable or assignable. No cash benefit payable under the Act shall be liable to attachment or sale in execution of any decree or order of any Court.

21. Write a short note on: ESI Court [Dec. 2010 (5 Marks)]

Ans.: ESI Court [Section 74]: The State Government shall by notification in the Official Gazette constitute an ESI Court for local area as may be specified in the notification.

Matters to be decided by ESI Court [Section 75]:

(1) **Adjudication of disputes:** The ESI Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.

(2) **Adjudication of claims:** The ESI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

Proceedings in both the above cases can be initiated by filing application in the prescribed form by the employee or his dependent or employer or the corporation depending who has cause of action.

No Civil Court has power to decide the matters falling within the purview/ jurisdiction of ESI Court.

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22. To which establishments the Employees Provident Fund & Miscellaneous Provisions Act, 1952 applies?

Or

An establishment discontinued deduction towards contribution to provident fund from its employees salary and stopped remitting contribution of its share of provident fund when the number of its employees on rolls fell to 15. Do the provisions of the EPF, 1952 cease to be applicable to the establishment under such circumstances? [Dec. 2008 (4 Marks)]

Ans.: Applicability [Section 1(3)]: The Act applies to:

(*a*) **Every factory** engaged in industry specified in **Schedule I** and in which 20 or more persons are employed.

(*b*) **Other establishment** employing 20 or more persons notified by Central Government in the Official Gazette.

The Central Government may after giving not less than 2 months notice in the Official Gazette apply the provisions of the Act to any establishment employing such number of persons less than 20.

Voluntary application of Act [Section 1(4)]: The Central PF Commissioner on an application by employer and the majority of employees of any establishment apply the provisions of this Act to that establishment.

Once the Act applies it continues to be applicable [Section 1(5)]: An establishment to which the EPF Act applies shall continue to be governed by the Act even if the number of persons employed falls below 20 at any time.

Establishments includes all departments and branches [Section 2A]: Where an establishment consists of different departments or branches situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

23. Galaxy Hotels Ltd., located in Sambhaji Nagar (Maharashtra), is covered under the provisions of the EPF Act, 1952. Recently, it started a new restaurant in Belgaum (Karnataka) where 15 employees were employed. The provident fund authorities demanded contribution in respect of 15 employees in the new establishment contending that it is a part of Galaxy Hotels Ltd. Is the demand of provident fund authorities justified? [Dec. 2010 (4 Marks)]

Ans.: The expression 'establishment' is not defined in the Act. Establishment means the place where business is carried on. One company can have more than one establishment. Thus, 'establishment' is different from 'owner'.

As per Section 2A of the EPF Act, 1952, where an establishment consists of different departments or branches situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

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for particular establishment. There is no provision that two different establishment has to be clubbed for the purpose of determining the applicability of the Act.

Thus, new restaurant in Belgaum is separate establishment and the Act will apply if numbers of employees employed are 20 or more. The demand of provident fund authorities is not justified.

24. Hotel Amravati is managed by a firm employing more than 100 employees and covered under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Some of its partners started a new restaurant in the premises registering the restaurant as a new unit as per the applicable State enactment. The restaurant employed 15 employees and the management of restaurant took a stand that the restaurant is a different establishment and is not covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Will it succeed? [June 2011 (4 Marks)]

Ans.: The expression 'establishment' is not defined in the Act. Establishment means the place where business is carried on. One company can have more than one establishment. Thus, 'establishment' is different from 'owner'.

As per Section 2A of the EPF Act, 1952, where an establishment consists of different departments or branches situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

As per the facts given in case new restaurant is started in the same premises, hence it will be treated as part of the establishment hence the Act will apply. Thus, stand taken by the management is not correct.

25. Vaibhav Rice Mills is employing 15 persons in its factory for its regular operation. During inspection, the Provident Fund Inspector found that whenever the goods arrived and also whenever the goods were sent out of the factory premises, a few casual labourers were engaged for loading and unloading purposes. The Provident Fund Inspector demanded the employer to comply with the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 on the ground that the total number of employees (including casual labourers) exceeded 20. Is the provident fund Inspector justified? [June 2012 (4 Marks)]

Ans.: As per Section 1(3), the EPF Act, 1952 applies to:

(*a*) Every factory engaged in industry specified in Schedule I and in which 20 or more persons are employed.

(*b*) Other establishments employing 20 or more persons notified by Central Government in the Official Gazette.

It is to be noted that casual or temporary persons employed in an establishment not connected with the normal or regular work of establishment and cannot be counted for the purpose of determining as to whether the establishment was governed by the provisions of the Act. But, where an establishment employs temporary employees as a part of the regular feature of employment, such employees cannot be construed as casual employees and will be included in the determining the total number of working in the establishment and hence Act is applicable. [*Chetram Agrawalla* v. *RPF Commissioner Orissa*]

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operation and as such 15 persons cannot be treated as casual employees rather they will treated as regular employee and if total number of persons employed are 20 or more the Act applies. Thus, the provident fund Inspector is justified.

26. Write a short note on: Exempted Establishment

Ans.: Act not to apply to certain establishments [Section 16]: The EPF Act, 1952 shall not apply:

(*a*) To any establishment registered under the Co-operative Societies Act, 1912, or State Co-operative society law employing less than 50 persons and working without the aid of power.

(*b*) To any other establishment belonging to or under the control of the Central or State Government and whose employees are entitled to the similar benefit.

(*c*) To any other establishment set-up under any Central, Provincial or State Act and whose employees are entitled to the similar benefits.

Power to exempt certain establishment: The Central Government after considering the financial position or other circumstances may by notification in the Official Gazette exempt certain establishment or class of establishments from the operation of the Act.

27. Write a short note on: 'Basic Wages' under the EPF Act, 1952 [June 1999 (3 Marks)]

Ans.: Basic Wages [Section 2(*b*)]: Basic wages means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, ***but does not include***:

(*i*) Cash value of any food concession.

(*ii*) Dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance.

(*iii*) Presents made by the employer.

28. Raju has been employed by Fancy Bazar as a part-time sweeper to clean the floors twice during the day. The provident fund inspector visited the establishment and raised objections for non-inclusion of his name in the muster roll and not paying provident fund contributions. Is the view held by the inspector valid? [Dec. 2009 (4 Marks)]

Ans.: Employee [Section 2(*f*)]: Employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person –

(*a*) Employed by or through a contractor in or in connection with the work of the establishment

(*b*) Engaged as an apprentice (*excluding an apprentice engaged under Apprentices Act 1961 or under the standing orders of the establishment*)

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employee, who is engaged for any work in the establishment. [*Railway Employees Co-operative Banking Society Ltd.* v. *The Union of India*]

Thus, Raju who has been employed by fancy Bazar as part time sweeper shall be covered as per definition of 'employee' as per Section 2(*f*) of the EPF Act.

29. Two partners of a partnership firm are taking salaries from the Firm. Will they be treated as 'employee' under the Employees' Provident Funds & Misc. Provisions Act, 1952? [Dec. 2003 (3 Marks)]

Ans.: As per Section 2(*f*) of the EPF Act, 1952, employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer.

In case of partnership firm there is no distinction between firm and partners. Partners themselves are employer and salaries are drawn by partner are drawings in anticipation of profits and return on capital investment by the partners.

Thus, working partners drawing salaries or other allowances are not employees as per the definition of 'employee' as given in Section 2(*f*) of the EPF Act, 1952.

30. Jay-Kay Ltd. employed casual workmen for a short duration of two months to execute a contingency plan of its operations. Are the casual workmen entitled for provident fund contribution from the employer? [June 2007 (3 Marks)]

Ans.: As per Section 2(*f*) of the EPF Act, 1952, employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer.

Persons employed for a short duration or on account or some urgent necessity or abnormal contingency should not be considered as an employee as it is not a regular feature of the business of the establishment. [*Bikaner Cold Storage Co. Ltd.* v. *Regional P.F. Commissioner, Rajasthan*]

Hence, casual workers are not entitled for PF contribution from the Jay-Kay Ltd.

31. Define the terms 'exempted employee' & 'excluded employee'. [June 2010 (5 Marks)]

Ans.: Exempted Employee: Exempted Employee means an employee to whom a Scheme or the Insurance Scheme as the case may be would, but for the exemption granted under section 17, have applied.

Excluded Employee: Excluded employee means:

(*i*) An employee who have withdrawn full amount of his accumulations in the Fund

(*ii*) An employee whose pay **exceeds ₹ 15,000 p.m.**

(*iii*) An apprentice.

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Explanation I: 'Pay' includes basic wages with dearness allowance retaining allowance (*if any*) and cash value of food concession admissible thereon.

Explanation II: An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.

32. Explain the law relating to extent of contribution by an employee to his provident fund under, the EPF Act, 1952. Can the amount of contribution be increased by the employee?

Ans.: As per Section 6 of the EPF Act, 1952, employer is required to pay PF Contribution @ 12%[1] of (Basic Wages + Dearness Allowance + Retaining Allowance). Employee is also required to pay 12% contribution. In case 'pay' is more than ₹ 15,000 per month, the contribution is payable only on ₹ 15,000. If employees are employed through contractor then principal employer is liable to contribution, which can be recovered from contractor. The employee can voluntarily pay higher contribution above 12%. However, employer is liable to pay contribution only at statutory rate *i.e.* 12%. The amount received by way of provident fund contributions is invested by the Board of Trustees in accordance with the investment pattern approved by the Government of India.

[1] *For some industries it is 10%.*

33. While employee may increase his share of provident fund contribution, is the employer also liable to proportionately increase his share of contribution under the Employees Provident Funds and Miscellaneous Provisions Act, 1952? [June 2002 (3 Marks)]

Ans.: As per Section 6 of the EPF Act, 1952, employer is required to pay PF Contribution @ 12% of (Basic Wages + Dearness Allowance + Retaining Allowance). The employee can voluntarily pay higher contribution above 12%. However, employer is liable to pay contribution only at statutory rate *i.e.* 12%.

34. Write a short note on: Employees Pension Scheme [June 2012 (5 Marks)]

Ans.: Employees Pension Scheme [Section 6A]: Government has introduced a new pension scheme styled Employees Pension Scheme, 1995 *w.e.f.* 16.11.1995. The scheme is applicable to all persons who become members of the provident fund.

Silent features of Employees Pension Scheme:

- Out of employer's contribution 8.33% goes to Employees' Pension Scheme (EPS).
- The Pension Fund shall vest in and be administered by the Board.
- Pension Scheme may provide for all or any of the matters specified in **Schedule III**.
- Minimum 10 years contributory service is required for entitlement to pension.
- Normal superannuation pension is payable on attaining the age of 58 years.

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contingencies:

(*a*) Superannuation on attaining the age of 58 years;

(*b*) Retirement;

(*c*) Permanent total disablement;

(*d*) Death during service;

(*e*) Death after retirement or superannuation or permanent total disablement;

(*f*) Children Pension; and

(*g*) Orphan pension.

- The Scheme provides for payment of monthly pension to family in case of death of employee. If the person is unmarried or has no family, pension is available to nominee for a specified period.

  Amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service.

35. Write a short note on: Employees Deposit Linked Insurance Scheme

Ans.: Employees Deposit Linked Insurance Scheme [Section 6B]: The Central Government is empowered to frame a Scheme to be called the Employees Deposit-Linked Insurance Scheme (EDLI) for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which the Act applies.

Features of EDLI:

- The purpose of EDLI is to provide life insurance benefit to employees.
- Employer is required to pay contribution which cannot be more than 1% of pay of employee plus administrative charges 0.01% of the pay.
- The Insurance Fund shall vest and administered by the Central Board.
- The Insurance Scheme may provide for all or any of the matters specified in **Schedule IV**.
- The nomination made by a member has overriding effect and will override the personal laws of the subscriber.
- **Payment of assurance benefit:** In case of death of a member, an amount equal to the average balance during the preceding 12 months or period of membership, whichever is less shall be paid to eligible person.

36. Under what circumstances can provident fund payable to an employee be attached in execution of a decree of the Court? [Dec. 2002 (3 Marks)]

Ans.: Protection against attachment [Section 10]:

(*a*) The amount standing to the credit of any member/employee/exempted employee in a provident fund cannot be assigned or charged and shall not be liable to attachment under any decree or order of any Court.

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any claim on such amount.

(c) Any amount standing to the credit of a member/employee/exempted employee at the time of his death and payable to his nominee vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court.

37. Discuss under the Employees Provident Funds & Miscellaneous Act, 1952 as to whether the Provident fund contribution is a preferential payment in case of the employer being declared insolvent.

Ans.: Priority of payment of contributions over other debts [Section 11]: If the employer is declared an insolvent or if the employer is a company and an order for winding-up has been made the amount due from the employer in respect of the employees and employer's contribution must be included among the debts which are to be paid in priority to all other debts under the Insolvency Acts. Hence, this payment will be preferential payment provided the liability therefore, has accrued before order of adjudication or winding-up is made.

38. Can employers reduce wages of any employee by reason of his liability for payment of any contribution to provident fund under the EPF Act, 1952?

Ans.: Employer not to reduce wages [Section 12]: No employer in relation to an establishment to which any Scheme or the Insurance Scheme applies shall, by reason only of his liability for the payment of any contribution to any fund or any charges under this Act, reduce, whether directly or indirectly, the wages of any employee.

39. An employee leaves the establishment in which he was employed and gets re-employment in another establishment. He desires that his Provident Fund Account be transferred to the establishment wherein he has been employed. Explain the procedure laid down in the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 in this relation.

Ans.: Transfer of accounts [Section 17A]:

(A) **Situation 1: Old Employer (EPF Act applies), New Employer (EPF Act does not apply):** Where an employee of in an establishment to which EPF Act applies leaves his employment and obtains re-employment in another establishment to which EPF Act does not apply, but has provident funds of its own then the amount to his credit in the fund shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed.

(B) **Situation 2: Old Employer (EPF Act does not apply), New Employer (EPF Act applies):** Where an employee employed in an establishment to which EPF Act does not apply but has provident funds of its own, leaves his employment and obtains re-employment in another establishment to which EPF Act applies, the amount to the credit of such employee in the provident fund of the establishment left by him be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed.

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and the rules in relation to that provident fund permit such transfer.

UNIT III – MATERNITY BENEFIT ACT, 1961

40. STATE THE APPLICABILITY OF THE MATERNITY BENEFIT ACT, 1961?

Ans.: Applicability [Section 2]: The Maternity Benefit Act, 1961 applies in the first instance:

(1) To every establishment being a factory, mine or plantation including any establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances.

(2) To every shops and establishment in which **10 or more** persons are employed or employed on any day of the preceding 12 months.

However, the State Government may, with the approval of the Central Government, by giving not less than 2 months in the Official Gazette, declare that all or any of the provisions of the Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

41. What are the prohibitions imposed for employment of women under the Maternity Benefit Act, 1961 before and after the pregnancy?

Ans.: Employment of women prohibited during certain period [Section 4]:

(1) Employer shall not knowingly employ a woman in any establishment for **6 weeks** (*i.e.* 1.5 month) after the day of her delivery, miscarriage or medical termination of pregnancy.

(2) Woman shall not work in any establishment for **6 weeks** after the day of her delivery, miscarriage or medical termination of pregnancy.

(3) If pregnant women makes request to her employer, she shall not be given any work of the following nature during 1 month immediately preceding the period of 6 weeks, before the date of her expected delivery:

(*a*) Any work which is of an arduous nature (*i.e. work of difficult nature*).

(*b*) Any work which involves long hours of standing.

(*c*) Any work which in any way is likely to interfere with her pregnancy or the normal development of the fetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

42. What are the maternity benefits available to woman workers under the Maternity Benefit Act, 1961?

Ans.: Right to payment of maternity benefit [Section 5]:

(1) Maternity Benefit: Every woman shall be entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence. The average daily wage means the average wages for the last 3 months before she absents on account of maternity.

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- Wages fixed or revised under the Minimum Wages Act, 1948 *or*
- ₹ 10.

(2) **Eligibility:** A woman shall be entitled to maternity benefit if she has actually worked for a period of at least 80 days in 12 months before the date of her expected delivery.

(3) **Period of benefit:**

(*a*) **For first two deliveries:** The maximum period for which any woman shall be entitled to maternity benefit shall be 26 weeks of which benefit of 8 weeks should be related to date before the date of her expected delivery.

(*b*) **For third and subsequent deliveries:** The maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be 12 weeks of which 6 weeks should be related to date before the date of her expected delivery.

(4) **Benefit in case of death of woman:** If a woman dies the maternity benefit shall be payable only for the days up to the day of her death. If a woman dies after delivering a child, the employer shall be liable for the maternity benefit for entire period. If the child also dies, then employer has to pay benefits up to and including the date of the death of the child.

(5) **Benefit in case of adoption of child and commissioning mother:** A woman who legally adopts a child below the age of 3 months or a commissioning mother shall be entitled to maternity benefit for a period of 12 weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(6) **Benefit of work from home:** In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

43. Write a short note on: Nursing Breaks under the Maternity Benefit Act, 1961

Ans.: Nursing breaks [Section 11]: Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of 15 months.

44. Write a short note on: Crèche Facility under the Maternity Benefit Act, 1961

Ans.: Crèche Facility [Section 11A]: Every establishment having 50 or more employees shall have the facility of crèche within such distance as may be prescribed, either separately or along with common facilities.

The employer shall allow **four visits** a day to the crèche by the woman, which shall also include the interval for rest allowed to her.

Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.

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45. STATE THE APPLICABILITY OF THE PAYMENT OF GRATUITY ACT, 1972.

Ans.: Applicability [Section 1(3)]: The Payment of Gratuity Act, 1972 shall apply to:

(*a*) Every factory, mine, oilfield, plantation, port and railway company.

(*b*) Every shop or establishment within the meaning of laws of shops and establishments in a State and in which **10 or more** persons are employed, or were employed, on any day of the preceding 12 months.

(*c*) Such other establishments in which **10 or more** employees are employed, or were employed, on any day of the preceding 12 months, as the Central Government specify by notification.

Act continues to be apply even number of employee are below 10 [Section 1(3A)]: A shop or establishment to which the Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below 10. *This provision is intended to check the tendency among the employers to artificially reduce the number of employee so as to get out of coverage of the Act.*

46. Santhi was employed in a factory since 2008 when the total employees in the factory were 54. She resigned from that employment on 31st March, 2023 after 15 years of continuous service. The factory owner denied to pay the amount of gratuity to Santhi stating that on the date of her retirement, the number of employees in the factory had come down to 8, hence the provisions of Gratuity Act, 1972 would not be applicable. Referring to the provisions of Gratuity Act, 1972, advise whether Santhi will succeed in her claim? **[June 2023 (3 Marks)]**

Ans.: Applicability [Section 1(3)]: The Payment of Gratuity Act, 1972 shall apply to:

(*a*) Every factory, mine, oilfield, plantation, port and railway company.

(*b*) Every shop or establishment within the meaning of laws of shops and establishments in a State and in which **10 or more** persons are employed, or were employed, on any day of the preceding 12 months.

(*c*) Such other establishments in which **10 or more** employees are employed, or were employed, on any day of the preceding 12 months, as the Central Government specify by notification.

Act continues to be apply even number of employee are below 10 [Section 1(3A)]: A shop or establishment to which the Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below 10. [*This provision is intended to check the tendency among the employers to artificially reduce the number of employee so as to get out of coverage of the Act.*]

In view of above, Santhi is entitled to gratuity under the Payment of Gratuity Act, 1972 from the owner of the factory.

47. Is an employee getting a wage of ₹ 3,600 per month eligible for gratuity under the Payment of Gratuity Act, 1972? **[Dec. 1997 (3 Marks)]**

Or

Kailash, a teacher in a private school having a basic salary of ₹ 3,500 per month, claims gratuity from the school management when he resigned from the service after serving for a period of 12 years. Will he succeed?
[June 2007 (3 Marks)], [June 2012 (4 Marks)]

Ans.: Employee [Section 2(*e*)]: Employee means any person (*other than an apprentice*) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which the Act applies.

Employee does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity

The wage ceiling of ₹ 3,500 has been removed. Thus, the Act is applicable to all employees irrespective of his salary/wages.

The definition of "employee" has been amended by the Payment of Gratuity (Amendment) Act, 2009 to cover the teachers in educational institutions retrospectively with effect from 3rd April, 1997. Teacher was held to be not an employee under the Act. The teachers are clearly not intended to be covered by the definition of 'employee'. [*Ahmadabad Pvt. Primary Teachers Association v. Administrative Officer*]

Now the controversy has been set at rest. The Payment of Gratuity (Amendment) Act, 2009 has amended the definition of 'employee' including teachers in educational institutions within the purview of the Act.

48. Explain the Concept of continuous service for the payment of gratuity under the Payment of Gratuity Act, 1972. [Dec. 2009 (5 Marks)]

Ans.: Completed year of service [Section 2(*b*)]: Completed year of service means continuous service for one year.

Continuous Service [Section 2A]:

(1) An employee shall be said to be in 'continuous service' for a period if he has been in un-interrupted service. Even if service is interrupted due to following reasons employee is said to be in continuous service:

- Sickness
- Accident
- Leave
- Absence from duty without leave*
- Layoff
- Strike
- Lock-out
- Cessation of work not due to any fault of the employee.

* Absence from duty without leave will be treated as break in service if an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment.

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year or 6 months as per clause (*1*), then he shall be deemed to be:

(*a*) in continuous service of 1 year if he has actually worked for not less than:

- **190 days** below the ground in a mine or in an establishment which works for less than 6 days in a week.
- **240 days** in any other case.

(b) in continuous service of 6 month if he has actually worked for not less than:

- **95 days** below the ground in a mine or in an establishment which works for less than 6 days in a week.
- **120 days** in any other case

***Explanation*:** Following shall be treated as 'days actually worked':

- He has been laid-off under applicable law.
- He has been on leave with wages.
- He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment.
- In the case of a female, she has been on maternity leave.

(3) Employee of seasonal establishment is not in continuous service of 1 year or 6 months as per clause (*1*) then he shall be deemed to be in continuous service if he has actually worked for not less than 75% days on which the establishment was in operation during such period.

49. A worker went on leave. He continued to remain absent from duty even after the expiry of leave. The employer treated the 'absence from duty without leave' as breach of continuity of service for the purposes of the Payment of Gratuity Act, 1972. Is the employer justified?
[June 2008 (3 Marks)], [June 2011 (4 Marks)]

Or

Mauji Ram was absent from duty without leave. The employer took the plea that it had resulted in the breach of continuous service for the purposes of gratuity under the Payment of Gratuity Act, 1972. Is the plea of the employer legal and enforceable? **[June 2010 (4 Marks)]**

Ans.: Section 2A of the Payment of Gratuity Act, 1972 provides that an employee shall be said to be in 'continuous service' for a period if he has been in un-interrupted service. Even if service is interrupted due to absence from duty without leave employee is said to be in continuous service.

Absence from duty without leave will be treated as break in service if an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment.

Treatment by employer as 'absence from duty without leave' as breach of continuity of service is not valid. Hence, the employer is not justified

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Or

The company declined to pay gratuity to a deceased employee's wife stating that the employee had worked for 2 years only whereas eligibility for receiving gratuity accrues only if he served for a period of five completed years of continuous service. Will she succeed? [Dec. 2008 (4 Marks)]

Ans.: When Gratuity is payable [Section 4(*1*)]: Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for **not less than 5 years** on his:

- Superannuation *or*
- Retirement *or*
- Resignation *or*
- Death or disablement due to accident or disease.

Exception: The completion of continuous service of 5 years is not necessary where the termination of the employment of any employee is due to *death* or *disablement*.

In given case as there is death of employee hence condition of completion of 5 years service is not applicable. Hence, wife of deceased employee will succeed in claiming gratuity.

51. To whom is Gratuity payable? [June 2000 (3 Marks)]

Ans.: Gratuity shall be payable to an employee himself.

However, in the case of death of the employee:

(*a*) It shall be paid to his nominee.

(*b*) If no nomination has been made, to his heirs.

(*c*) Where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, until such minor attains majority.

52. Lotus Info. Ltd. entered into a settlement with its workmen providing for payment of gratuity at the rate of one month's salary for every completed year of service. An employee retired on superannuation and claimed gratuity as per the settlement. The employer pleaded that he is under no obligation to pay gratuity more than the rate prescribed under the Payment of Gratuity Act, 1972. Is the employer's contention tenable in law? [Dec. 2011 (4 Marks)]

Ans.: An employee may sometime be entitled to receive better terms of gratuity under any award or agreement or contract with employer. In such case, nothing contained Section 4 shall affect the right of employee to receive better terms.

As per the Payment of Gratuity Act, 1972 employee is entitled to receive gratuity at the rate of 15 days salary for every completed year of service. Whereas the Lotus Info. Ltd. entered into a settlement with its workmen providing for payment of gratuity at the rate of one month's salary for every completed year of service. As settlement

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to pay gratuity more than the rate prescribed under the Payment of Gratuity Act, 1972. Hence, the employer's contention is not tenable in law.

53. Can the whole gratuity be forfeited service of employee have been terminated for any act of wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer. **[June 2001 (3 Marks)]**

Or

Distinguish between: 'partial forfeiture of gratuity' & 'total forfeiture of gratuity' under the Payment of Gratuity Act, 1972. **[Dec. 2005 (5 Marks)]**

Or

Write a short note on: Forfeiture of gratuity **[Dec. 2011 (5 Marks)]**

Ans.: As per Section 4(*6*), Gratuity shall be forfeited, **if employee's services have been terminated:**

Situations	Extent of forfeiture
(1) For any act of wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer.	Forfeited to the extent of the damage or loss or caused
(2) For riotous & disorderly conduct or any other act of violence.	Wholly or partially forfeited
(3) For any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.	

Where the service has not been terminated on any of the above grounds, the employer cannot withhold gratuity due to the employee.

54. Can the gratuity be withheld for non-vacation of service quarters by the retiring employees? **[Dec. 2003 (3 Marks)]**

Or

Ramesh was occupying service quarters of a company at the time of retirement. He did not vacate the house after retirement. The company withheld the payment of gratuity to the retired employee on this ground. Can Ramesh claim the payment of gratuity and succeed against the employer? **[June 2006 (3 Marks)], [Dec. 2006 (3 Marks)], [Dec. 2009 (4 Marks)]**

Ans.: Gratuity shall be forfeited, if employee's services have been terminated for the grounds covered in Section 4(*6*) only. Gratuity cannot be forfeited on any other grounds. Hence, gratuity cannot be withheld for non-vacation of service quarters or house by retiring employees. [*Air India* v. *Authority under the Act*]

55. Rajiv, an employee of the store department of a factory, had been in employment for 6 years. Two years back, he was suspended for one day due to misbehaviour with his supervisor, subsequently, he was also alleged to have

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and his services were terminated. Is he entitled to the gratuity.
[Dec. 2001 (3 Marks)]

Ans.: As per Section 4(*6*), Gratuity shall be forfeited wholly or partially, if an employee services have been terminated for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

When an offence of theft under law involves moral turpitude, gratuity stands wholly forfeited in view of Section 4(*6*) of the Act. [*Bharat Gold Mines Ltd.* v. *Regional Labour Commissioner*]

Rajiv's services were terminated as he was involved in offence of theft. All the conditions of Section 4(*6*) has been fulfilled hence whole of gratuity can be forfeited.

56. Suresh retired on attaining the age of superannuation. After retirement, it was noticed that he had misappropriated travelling allowance drawn by him. The employer decided to deduct the misappropriated amount from the gratuity payable to him. Is the action of the employer legally tenable?
[Dec. 2010 (4 Marks)]

Ans.: Gratuity shall be forfeited, if employee's services have been terminated for the grounds covered in Section 4(*6*) only. Gratuity cannot be forfeited on any other grounds. As per the facts given in the case Suresh retired on attaining the age of superannuation and his service is not terminated by the employer. Once employee retires on superannuation, it cannot be said that service of the employee have been terminated the employer. Hence, Suresh is entitled to receive the gratuity. Action of employer is not legally tenable.

57. Write a short note on: Protection of gratuity [June 2012 (5 Marks)]

Ans.: Protection of gratuity [Section 13]: Gratuity payable under the Act and gratuity payable to an employee employed in any establishment or exempted establishment *shall not be liable to attachment* in execution of any decree or order of any civil, revenue or criminal Court.

58. Calculate the amount of gratuity of Mr. X who joined the company on 1.5.1994 and retired on 30.11.2024 when his salary was ₹ 26,000 per month. During November, 2024 he received overtime and incentive ₹ 5,000.

Ans.: Service period = 30 years 6 months & 30 days.

$$\text{Gratuity payable} = \frac{\text{Last drawn wages}}{26} \times 15 \text{ days} \times \text{No. of completed years of service}$$

$$= \frac{26,000}{26} \times 15 \times 31$$

$$= 4,65,000$$

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59. What is meant by 'Apprentice' under the Apprentices Act, 1961? What are the qualifications for being engaged as an apprentice?

Ans.: Apprentice [Section 2(*aa*)]: Apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

Qualifications for an apprentice [Section 3]: A person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, if such person

(1) His age is not less than 14 years and for designated trades related to hazardous industries his ages is not less than 18 years.

(2) He satisfies prescribed standards or education and physical fitness.

However, different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

60. An illiterate apprentice aged 10 years was employed as apprentice under the contract by a shop keeper to write cash memos on a stipend of ₹ 500 per month. The apprentice made several mistake causing heavy loss to the employer. Enraged, he refused to pay his stipend. The apprentice claimed it through his father. Will he succeed? [Dec. 1997 (5 Marks)]

Ans.: As per Section 3 of the Apprentice Act, 1961, a person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, if such person is not less than 14 years of age. In the given case the age of apprentice is 10 years and as such he is not 'apprentice' under the Apprentice Act, 1961, hence he will not succeed.

61. What are the obligation of employers and apprentice under the Apprentice Act, 1961? [June 1996 (5 Marks)]

Ans.: Obligations of employers: Every employer shall have the following obligations:

(*a*) To provide training to the apprentice as per provisions of the Act and the rules.

(*b*) To ensure that a person having prescribed qualification is placed in charge of the training, if the employer is not himself qualified.

(*c*) To provide adequate instructional staff for imparting practical and theoretical training and facilities for trade test of apprentices.

(*d*) To carry out his obligations under the contract of apprenticeship.

Obligations of apprentices: Every trade apprentice shall have the following obligations:

(*a*) To learn his trade conscientiously and diligently.

(*b*) To qualify himself as a skilled craftsman before the expiry of training period.

(*c*) To attend practical and instructional classes regularly.

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(e) To carry out his obligations under the contract of apprenticeship.

62. Write a short note on: Contract of apprenticeship

Ans.: Contract of apprenticeship [Section 4]:

(1) **Contract of apprenticeship:** No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is a minor, his guardian has entered into a contract of apprenticeship with the employer.

(2) **Date of commencement of apprenticeship training:** The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into.

(3) **Terms and conditions:** Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract. However, no such term or condition shall be inconsistent with any provision of the Act or any rules made thereunder.

(4) **Sending details to Government:** Every contract of apprenticeship shall be sent by the employer within 30 days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within 7 days, for verification and registration.

(5) **Objection in contract of apprenticeship:** In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within 15 days from the date of its receipt.

(6) **Time limit of registration:** The Apprenticeship Adviser shall register the contract of apprenticeship within 30 days from the date of its receipt.

(7) **Variations of rules:** Where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

UNIT VI – LABOUR LAWS (SIMPLIFICATION OF PROCEDURE FOR FURNISHING RETURNS & MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS) ACT, 1988

63. What do you understand by 'small establishment' & 'very small establishment'? [Dec. 1995 (5 Marks)]

Ans.: Small Establishment [Section 2(e)]: Small establishment means an establishment in which not less than 10 and not more than 40 persons are employed or were employed on any day of the preceding twelve months.

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establishment in which not more than 9 persons are employed or were employed on any day of the preceding twelve months.

64. Discuss briefly the provisions relating to exemption from returns and registers required under the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988. [June 1997 (8 Marks)]

Ans.: Exemption from furnishing or maintaining of returns and registers requires under certain labour laws [Section 4]:

(1) It shall not be necessary for an employer in relation to any small or very small establishment, to furnish the returns or to maintain registers required to be furnished or maintained under the Scheduled Act.

(2) It may be noted that such employer:

(*a*) Furnishes, in lieu of such returns, Annual Return in Form I.

(*b*) Maintains, in lieu of such registers –

(*i*) Registers in Form II & Form III, in the case of small establishments.

(*ii*) Register in Form III, in the case of very small establishments.

Every such employer shall continue to issue wage slips in the prescribed Form for minimum wages and slips relating to measurement of the amount of work done by piece-rated workers in respect of payment of wages.

Every such employer file returns relating to accidents under the Factories Act, 1948 and the Plantations Labour Act, 1951.

(3) **Option to maintain record in electronic form:** The annual return in Form I and the registers in Forms II & III and wage slips, wage books and other records, may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media. However, in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

(4) **Option to furnish annual return in electronic form:** The employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

65. What is the penalty for failure to comply with the provisions of the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988?

Ans.: Penalty [Section 6]: Any employer who fails to comply with the provisions of this Act shall, on conviction, be punishable –

(*a*) **In the case of the first conviction:** Fine up to ₹ 5,000.

a period which shall not be less than one month but which may extend to 6 months *or* with fine which shall not be less than ₹ 10,000 but may extend to ₹ 25,000, *or* with both.

CHAPTER 20 AT WORKPLACE (PREVENTION, PROHIBITION & REDRESSAL) ACT, 2013

1. Define 'sexual harassment' under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013. Also state provisions relating to prevention of sexual harassment.

Ans.: Sexual Harassment [Section 2(*n*)]: Sexual harassment includes any one or more of the following unwelcome acts or behaviour *(whether directly or by implication)* namely:

(*i*) Physical contact and advances.

(*ii*) A demand or request for sexual favours.

(*iii*) Making sexually coloured remarks.

(*iv*) Showing pornography.

(*v*) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Prevention of sexual harassment [Section 3]: No woman shall be subjected to sexual harassment at any workplace. The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:

(*a*) Implied or explicit promise of preferential treatment in her employment.

(*b*) Implied or explicit threat of detrimental treatment in her employment.

(*c*) Implied or explicit threat about her present or future employment status.

(*d*) Interference with her work or creating an intimidating or offensive or hostile work environment for her.

(*e*) Humiliating treatment likely to affect her health or safety.

2. Managing Committee of Goa Tourism Ltd. wants to constitute an Internal Complaint Committee (ICC) under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013. Advice them in the light of the provisions of the Act on the constitution of such committee. [Dec. 2018 (3 Marks)]

Or

Define Internal Complaints Committee under Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. [June 2021 (3 Marks)]

Ans.: Internal Complaints Committee: The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 makes it mandatory

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entertains the complaints made by any aggrieved women.

The members of the ICC are to be nominated by the employer and ICC should consist of –

(*a*) A Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees.

(*b*) Not less than 2 members from amongst employees preferably committed to the cause or women or who have had experience in social work or have legal knowledge.

(*c*) One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

In order to ensure participation of women employees in the ICC proceedings, the Act requires that at least one-half of the members of ICC nominated by employer are women.

Local Complaints Committee: Provisions have been made under the Act to form Local Complaints Committee (LCC) for every district for receiving complaints of sexual harassment from establishments where the ICC has not been formed due to having less than 10 workers or if the complaint is against the employer himself.

3. What is complaint procedure under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013?

Or

Reshma is working as computer operator in M Ltd. on contractual basis. As per manpower agreement, all contractual employees are provided through outsourcing by H Ltd. only. One day she was working long after office hour due to extra work load. David, General Manager (Finance), M Ltd. made unfair touch with her. She wants to file written complaint against him under the Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Advise her to file the Complaint and what is the Complaint Procedure? [June 2022 (5 Marks)]

Ans.: Section 9 of the Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 makes following provisions relating to complaint of sexual harassment.

(1) **To whom complaint can be made:** The aggrieved woman can make written complaint of sexual harassment at workplace to the Internal Complaints Committee (ICC) or to the Local Complaints Committee (LCC) (*in case a complaint is against the employer*).

(2) **Time limit for making complaint:** Complaint of sexual harassment within a period of 3 months from the date of incident and in case of a series of incidents, within a period of 3 months from the date of last incident.

(3) **Extension of time in making complaint:** The ICC or LCC may, for the reasons to be recorded in writing, extend the time limit not exceeding 3 months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

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(4) Assistance in making complaint: If the aggrieved woman is unable to make complaint in writing, reasonable assistance shall be rendered by the presiding officer or any member of the ICC or LCC for making the complaint in writing.

(5) **Other person entitled to make complaint:** In case the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by following person with written consent of the aggrieved woman:

- Relative or
- Friend or
- Co-worker or
- Officer of the National Commission for Woman or State Women's Commission or
- Any person who has knowledge of the incident.

In view of the above mentioned provisions, Reshma can make written complaint of sexual harassment by General Manager of M Ltd. at workplace to the Internal Complaints Committee or to the Local Complaints Committee within a period of 3 months from the date of incident and in case of a series of incidents, within a period of 3 months from the date of last incident in writing.

4. Write down the duties of the employer under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
[June 2023 (3 Marks)]

Ans.: Duties of employer [Section 19]: Following are the duties of employer under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013:

(1) **To provide safe working environment:** Every employer shall provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace.

(2) **To display penal consequences of sexual harassments:** Every employer shall display at any conspicuous place in the workplace, the penal consequences of sexual harassments and the order constituting, the Internal Committee.

(3) **To organize workshops & awareness programmes:** Every employer shall organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in prescribed manner.

(4) **To provide necessary facilities to Internal/Local Committee to deal with complaint and inquiry:** Every employer shall provide necessary facilities to the Internal Committee or the Local Committee, for dealing with the complaint and conducting an inquiry.

(5) **To secure attendance of respondent and witnesses:** Every employer shall assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be.

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(6) **To make available information relating to complaint:** Every employer shall make available such information to the Internal Committee or the Local Committee, as it may require having regard to the complaint.

(7) **To provide assistance to woman in filing complaint:** Every employer shall provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force.

(8) **To initiate action against perpetrator:** Every employer shall cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place.

(9) **To treat sexual harassment as misconduct:** Every employer shall treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.

(10) **To monitor timely submission of reports:** Every employer shall monitor the timely submission of reports by the Internal Committee.

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CASE BASED OBJECTIVE QUESTIONS

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1. Mr. Manish has recently graduated from Delhi University by taking M. Com. Degree. He wants to start a business of Saree Shop in near locality of his residence. Advise him which of the following is correct in relation to Sole Proprietorship.

(A) Being small business, Sole Proprietorship always has limited liability on owner.

(B) Just as a partnership, a sole proprietorship has separate existence.

(C) Sole Proprietor has to register himself with income tax authorities just like a company which has to register with ROC.

(D) There is no separate registration procedure for proprietorships. All a person needs is a government registration relevant to the business.

2. Sagar and his friends want to start a business by incorporating LLP under the LLP Act, 2008. The Ministry of Corporate Affairs (MCA) has given some concessions to the LLP. Advise Sagar which of the following concession is available to LLP.

(A) An audit of accounts need to be performed by LLP only if its turnover is greater than ₹ 50 lakh

(B) An audit of accounts need to be performed by LLP only if capital contribution by the partners is more than ₹ 20 lakh.

(C) An audit of accounts need to be performed by LLP only if its turnover is greater than ₹ 40 lakh

(D) An audit of accounts need to be performed by LLP only if its turnover is greater than ₹ 50 lakh and partner's contribution is more than ₹ 40 lakh.

3. Some social activists have recently incorporated a public company for carrying out charitable activities and took license from the Central Government under section 8 of the Companies Act, 2013. Tell them which of the following is feature of such Section 8 Company?

(A) Section 8 Company requires paid-up capital less than 5 lakh but more than 2 lakh.

(B) Section 8 Company may pay of dividends to its members if some surplus remains after social activity programmes.

(C) Name of the Company can be incorporated without using the word "Limited" or "Private Limited".

(D) None of the above is feature of Section 8 Company.

4. Pratik wants to covert his Sole Proprietorship into One Person Company (OPC) under the provisions of the Companies Act, 2013. You are required to state which of the following statement is correct in relation to OPC?

(A) In One Person Company, shareholder can make only 2 nominees.

(B) There is scope of raising equity funding or offering employee stock options.

(C) One Person Company can appoint only one person as director and hence One Person Company cannot have two or more directors.

(D) One Person Company may have more than one director on its Board.

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selection of a suitable form of a business organization is generally governed by –

(A) Scale of Operations

(B) Managerial Ability

(C) Degree of Control and Management

(D) All of the above

6. Nature of Business Activity is an important factor having a direct bearing on the choice of a form of ownership. Which of the following is correct?

(A) Service enterprises like hotels and lodging places; trading enterprises, such as wholesale trade, retail houses; small scale manufacturing enterprises, small drug manufacturers, *etc.* can be undertaken in the form of partnership.

(B) In small trading businesses, professions, and rendering of personal services, sole proprietorship is predominant.

(C) Partnership is also advantageous in case of manufacturing activities on a modest scale. The finance, trading and real estate industries (*on a smaller scale*) seem to be suited to partnership form of organization. Some of the financial businesses that find this form advantageous are tax, accounting, stockbrokerage firms, and consulting agencies *etc.*

(D) All of the above are correct statements.

7. Which of the following is correct in relation to 'Micro Enterprise' as per the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006?

(A) The investment in plant and machinery or equipment does not exceed ₹ 1 Crore and turnover does not exceed ₹ 5 Crore.

(B) The investment in plant and machinery or equipment does not exceed ₹ 50 Lakh.

(C) The investment in plant and machinery or equipment does not exceed ₹ 2 Crore and turnover does not exceed ₹ 10 Crore.

(D) The investment in plant and machinery or equipment does not exceed ₹ 25 Lakh and turnover does not exceed ₹ 100 Lakh.

8. Madan and his friend Sundar started a small factory in the industrial area at Satara in Maharashtra State. They made available following details from their latest audited balance sheet.

Paid-up Capital	– ₹ 8 Crore
Machineries and Equipments	– ₹ 6 Crore
Turnover	– ₹ 9 Crore
Borrowings	– ₹ 1 Crore

Advise Madan as how their enterprise shall be classified under the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006?

(A) Small Enterprise

(B) Medium Enterprise

(C) Micro Enterprise

(D) Any of the above at the option of owner depending upon the subsidy that the owner wants to receive from the government.

9. The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organization. In relation to his which of the following is incorrect?

(A) Ownership, management, and control are completely fused, and therefore, an entrepreneur (sole proprietor) has no complete control over his business.

(B) In partnership, the partners have equal voice in the management of partnership business.

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ership and management in case of company form of organization.

(D) 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, one may prefer the company form of organization.

10. In the choice of the form of business organization, tax implication plays an person/entity can claim basic exemption from the total income while computing tax liability under the Income-tax Act, 1961?

(A) Individual

(B) HUF

(C) Partnership

(D) Both (A) and (B) of the above

Answers:

1.	(D)	**2.**	(C)	**3.**	(C)	**4.**	(D)	**5.**	(D)	**6.**	(D)	**7.**	(A)
8.	(A)	**9.**	(A)	**10.**	(A)								

2 : CORPORATE ENTITIES – COMPANIES

1. Out of the two members of XYZ Pvt. Ltd., one member left on 1st November, 2022. Seven months since then, company had only one member and the company was carrying on business. What is the consequence? Choose the right answer and justify the same.

(A) Every person who is a member of the company during the time that it so carries on business after elapse of six months and is cognizant of the fact that it is carrying on business with less than two members shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore.

(B) XYZ Pvt. Ltd., being separate entity may sue the existing member for negligence.

(C) XYZ Pvt. Ltd. shall be declared as insolvent.

(D) There is no restriction to the membership of the company since the notification Companies (Amendment) Act, 2017.

2. Seven friends are about to incorporate a public company. Out of them A, B, C & D makes following statements about the nature and characteristics of the company that can be incorporated under the Companies Act, 2013.

Mr. A: A company can have the status of a citizen under the Constitution of India.

Mr. B: In case of companies limited by guarantee having share capital, a shareholder who has paid ₹ 85 on a share of face value ₹ 100 can be called upon to pay the balance of ₹ 15 only and had no further liability.

Mr. C: An unlimited company may not have share capital.

Mr. D: The members of an unlimited company are liable directly to the creditors of the company.

Select correct answer from the options given below:

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(A) Statement made by Mr. A & Mr. C is correct.

(B) Only Statement made by Mr. D is correct.

(C) Only Statement made by Mr. C is correct.

(D) Statement made by Mr. A, Mr. B & Mr. D is correct.

3. Sanam Private Limited provides you following details from its last audited Balance Sheet:

Paid-up share capital	: ₹ 3.5 Crore
Turnover	: ₹ 34 Crore
Borrowings	: ₹ 28 Crore

Select which of the following statement is correct in relation to Sanam Private Limited.

(A) Sanam Private Limited is not Small Company as its paid-up capital is more than ₹ 2 Crore.

(B) Sanam Private Limited is Small Company as it fulfils the conditions laid down in Section 2(85).

(C) Sanam Private Limited is not Small Company as its borrowings are more than ₹ 25 Crore even though its paid-up share capital is less than ₹ 4 Crore and turnover is less than ₹ 40 Crore.

(D) Sanam Private Limited is Small Company as its turnover is less than ₹ 35 Crore.

4. KTL Ltd. and LMN Ltd. are two companies. Paid-up capital of LMN Ltd. consists of 5,00,000 equity shares of ₹ 5 each. KTL Ltd. holds 1,12,000 equity shares of LMN Ltd. As a Company Secretary advice directors of the KTL Ltd. which of the following statement is true?

(A) LMN Ltd. is Small Company.

(B) KTL Ltd. is Associate Company of LMN Ltd.

(C) LMN Ltd. is Associate Company of KTL Ltd.

(D) [illegible] Company of KTL Ltd. as KTL Ltd. held less than 25% paid-up capital of LMN Ltd.

5. Rakesh Private Limited has equity shares of 8,40,000 of ₹ 10 each, General Reserve ₹ 36,00,000, Debenture Redemption Reserve ₹ 5,88,000 and Securities Premium ₹ 24,00,000. Rakesh Private Limited is not a Startup Company. Calculate the maximum deposit that can be accepted by Rakesh Private Limited from its shareholders.

(A) ₹ 1,44,00,000 [*i.e.* ₹ 1,44,00,000 × 100%]

(B) ₹ 1,49,88,000 [*i.e.* ₹ 1,49,88,000 × 100%]

(C) ₹ 50,40,000 [*i.e.* ₹ 1,44,00,000 × 35%]

(D) ₹ 36,00,000 [*i.e.* ₹ 1,44,00,000 × 25%]

6. Maskat Pvt. Ltd. is a private limited company as per the Article of Association of the company. However, a public company acquired shares in Maskat Pvt. Ltd. thereby making the Masons Pvt. Ltd., a subsidiary of that public company. Identify the correct statement(s).

(A) If private company is subsidiary of public company then it will be treated as public company.

(B) Maskat Pvt. Ltd. will be treated as public company under the Companies Act, 2013 even though Masons Pvt. Ltd. continues to be a private company in its articles.

(C) Public companies are prohibited to acquire shares in private company unless permitted by Central Government.

(D) Both (A) and (B) are correct.

7. Identify which of the following statement(s) is/are correct in relation to One Person Company (OPC)?

(*i*) An OPC may be formed either as company limited by shares or

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unlimited liability company.

(*ii*) One Person Company may have more than one director on its Board.

(*iii*) OPC need not hold annual general meeting.

(*iv*) Only a natural person who is an Indian citizen and resident in India shall be a nominee for the sole member of OPC and for this purpose "Resident in India" means a person who has stayed in India for a period of not less than 180 days during the immediately preceding financial year.

Select correct answer from the options given below:

(A) (*i*) and (*ii*) only

(B) (*iii*) and (*iv*) only

(C) (*ii*), (*i*) and (*iv*) only

(D) (*iv*), (*i*) and (*iii*) only

8. As per provisions of the Companies (Incorporation) Rules, 2014, the person nominated by the subscriber or member of One Person Company (OPC) may, withdraw his consent by giving a notice in writing to such sole member and to the OPC. However, the sole member shall nominate another person as nominee within ..... of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in .....

(A) 15 days; Form INC-3

(B) 30 days; Form INC-4

(C) 15 days; Form INC-4

(D) 1 month; Form INC-3

of Varun Ltd. is held by the Central Government and 10% is held by the Life Insurance Corporation of India and 8% is held by Unit Trust of India (Public Institutions). Analyze the definition of 'Government Company' under the provisions of the Companies Act, 2013 and decide whether Varun Ltd. is a Government Company.

(A) Varun Ltd. is Government Company as total holding of Central Government and Public Institution (LIC & UTI) is 58% which more than threshold specified in Section 2(*45*) of the Companies Act, 2013.

(B) Varun Ltd. is not Government Company as total holding of Central Government is not more than threshold specified in Section 2(*45*) of the Companies Act, 2013.

(C) Varun Ltd. must apply Central Government to treat it as Government Company.

(D) Varun Ltd. is subsidiary of Life Insurance Corporation of India and Unit Trust of India.

10. According to Rule 15 of the Nidhi Rules, 2014, Nidhi shall provide loans only to its members. Ram and Shyam are the two members of XYZ Nidhi Company and deposited sum of ₹ 125 lakh and ₹ 230 lakh respectively. Advise how much loan can be given to Ram and Shyam by the XYZ Nidhi Company.

(A) two lakh rupees; seven lakh fifty thousand rupees

(B) one lakh rupees; five lakh rupees

(C) two lakh rupees; five lakh rupees

(D) five lakh rupees; seven lakh fifty thousand rupees

Answers:

1.	(A)	2.	(C)	3.	(B)	4.	(C)	5.	(A)	6.	(D)	7.	(D)
8.	(A)	9.	(B)	10.	(A)								

3 : LIMITED LIABILITY PARTNERSHIP

1. Fit Rating LLP provides you following data from its latest audited balance sheet:

Contribution of partners	: ₹ 24 lakh
Turnover	: ₹ 47 lakh
Borrowing	: ₹ 51 lakh

Which of the following statement is correct in relation to Fit Rating LLP?

(A) Fit Rating LLP can be categorized as Startup LLP.

(B) Fit Rating LLP deemed to be company.

(C) Fit Rating LLP is not Small LLP as its borrowing is above ₹ 50 lakh.

(D) Fit Rating LLP is Small LLP.

2. Startup LLPs are LLPs registered with ..... as "Start-ups" and enjoy the privileges of the Start-up India Scheme of the Central Government during the first ..... of their registration.

(A) DPIIT, Ministry of Commerce and Industries; ten years

(B) MCA, Ministry of Company Affairs; fifteen years

(C) DPIIT, Ministry of Commerce and Industries; five years

(D) Ministry of Industrial Development and Regulations; ten years

3. As per Section 7 of the LLP Act, 2008, every limited liability partnership shall have at least ..... designated partners who are individuals and at least ..... of them shall be a resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than ..... during the financial year

(A) two; one; one hundred and twenty days

(B) three; two; one hundred and twenty days

(C) two; one; one hundred and eighty days

(D) five; two; one hundred and twenty days

4. Smita and Gita are partners of XYZ LLP. Recently Smita had changed her residence address and admitted Radha as a new partner in LLP. As a Practicing Company Secretary advise the partners of XYZ LLP as to compliance to be made under the provisions of the LLP Act, 2008. Choose the correct answer from the options given below:

(A) Notice of change in address of Smita should be filed with ROC within 60 days in prescribed form while notice of admission of new partner Radha must be filed with ROC within 30 days.

(B) Notice of change in address of Smita should be filed with ROC within 30 days in prescribed form while notice of admission of new partner Radha must be filed with ROC within 60 days.

(C) No notice of change in address of Smita is required to be filed with ROC. However, notice of admission of new partner Radha must be filed with ROC within 30 days.

(D) Notice of change in address of Smita as well as notice of admission of new partner Radha must be filed with ROC within 30 days.

5. Raja and Rani had recently formed RR LLP. They engage you as a Practicing Company Secretary to help them to make various compliance required to be made under LLP Act, 2008. For which of the following event(s) RR LLP must file Form 4 with ROC.

(A) Consent & Particulars of Partner/ Designated Partner

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(C) Change in Designated Partners

(D) All of the above

6. Every Limited Liability Partnership shall, within a period of ..... from the end of each financial year, prepare a Statement of Account and Solvency in ..... and such statement shall be signed by the designated partners of the Limited Liability Partnership.

(A) 6 months; Form No. 8

(B) 5 months; Form No. 9

(C) 3 months; Form No. 8

(D) 6 months; Form No. 7

7. Which of the following LLP will be required to get its accounts audited from Chartered Accountant:

Particulars	AB LLP	XY LLP	PQ LLP	MN LLP
Turnover	42,00,000	38,00,000	32,50,000	42,00,000
Contribution	24,00,000	26,00,000	18,50,000	26,00,000
Reserve	2,00,000	3,00,000	4,00,000	5,00,000
Borrowings	26,00,000	24,00,000	51,00,000	49,00,000

given below:

(A) Only PQ LLP will be required to get its accounts audited.

(B) Only XY LLT and MN LLP will be required to get its accounts audited.

(C) All the LLPs are required to get its accounts audited.

(D) Except PQ LLP all other LLPs are required to get its accounts audited.

8. As per Section 44AA, Partnership Firms/LLPs carrying on business or profession has to maintain books of account if his income from business or profession exceeds ..... or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds ..... in any one of the ..... immediately preceding the previous year.

(A) ₹ 1,20,000; ₹ 10 lakh; 3 years

(B) ₹ 1,50,000; ₹ 10 lakh; 5 years

(C) ₹ 1,20,000; ₹ 5 lakh; 5 years

(D) ₹ 1,50,000; ₹ 10 lakh; 3 years

Answers

1.	(D)	2.	(A)	3.	(A)	4.	(D)	5.	(D)	6.	(A)	7.	(D)
8.	(A)												

4 : STARTUPS & ITS REGISTRATION

1. RBH is Startup Company registered in the year 2022. The Managing Director of RBH, Mr. Balwant wants to issue sweat equity shares amounting to 55% of its paid-up capital to some of its employees.

Suggest the correct course of action to Mr. Balwant:

(A) RBH being Startup Company cannot issue sweat equity shares exceeding 50% of its paid-up share capital up to 10 years from the date of its incorporation or registration.

(B) RBH being Startup Company cannot issue sweat equity shares exceeding 50% of its paid-up

share capital up to 5 years from the date of its incorporation or registration.

(C) RBH being Startup Company cannot issue sweat equity shares exceeding 60% of its paid-up share capital up to 5 years from the date of its incorporation or registration.

(D) RBH being Startup Company cannot issue sweat equity shares exceeding 60% of its paid-up share capital up to 10 years from the date of its incorporation or registration.

2. An entity shall be considered as a Startup:

1. Up to a period of ..... from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
2. Turnover of the entity for any of the financial years since incorporation/registration has not exceeded .....
3. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

The correct answer is –

	1	2
(A)	10 years	₹ 100 Crore
(B)	15 years	₹ 10 Crore
(C)	15 years	₹ 25 Crore
(D)	10 years	₹ 50 Crore

3. Bhuvan and Bhushan want to incorporate a Startup as private limited company to start manufacturing unit of electric vehicle. Advice them as which of the following statement is correct as to initiatives taken by the Central Government to provide funds to Startups?

(A) Government has created Funds for Startups (FFS) at Small Industries Development Bank of India (SIDBI) with a corpus of ₹ 10,000 Crore.

(B) Funds For Startups (FFS) shall contribute to the corpus of Mutual Funds (MFs) for investing in equity and equity linked instruments of various Startups.

(C) Government has launched a Startup India Seed Fund worth ₹ 1000 Crore to help startups and support ideas from aspiring entrepreneurs.

(D) Both (A) and (C) are correct.

4. RAKA Pvt. Ltd. is Startup Company registered in the year 2020. Directors of the RAKA Ltd. want a legal advice as to applicability of lesser penalties under Section 446B of the Companies Act, 2013.

If penalty is payable for non-compliance of any of the provisions of Companies Act, 2013 by a Startup company or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person shall be liable to a penalty which .....

(A) shall not be more than one half of the penalty specified in such provisions subject to a maximum of ₹ 2 lakh in case of a company and ₹ 1 lakh in a case of an officer who is in default or any other person.

(B) shall not be more than one fourth of the penalty specified in such provisions subject to a maximum of ₹ 2 lakh in case of a company and ₹ 1 lakh in a case of an officer who is in default or any other person.

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the penalty specified in such provisions subject to a maximum of ₹ 1 lakh in case of a company and ₹ 1 lakh in a case of an officer who is in default or any other person.

(D) shall not be more than one half of the penalty specified in such provisions subject to a maximum of ₹ 2 lakh in case of a company and ₹ 2 lakh in a case of an officer who is in default or any other person.

5. Ministry of Environment and Forests (MOEF) has published a list of ..... industries. Startups falling under that category would be able to self-certify compliance in respect of three Environment Acts namely, the Water (Prevention & Control of Pollution) Act, 1974; the Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003; the Water (Prevention & Control of Pollution) Act, 1981.

(A) 36 white category

(B) 42 red category

(C) 21 blue category

(D) 36 green category

6. One of your clients which is private limited company desire to get it recognized as Startup Company. Which of the following is correct in relation to making application to get it recognized as Startup Company?

(A) Eligible entity which satisfies the conditions to recognize it as Startup shall make an online application over the mobile app.

(B) Eligible entity which satisfies the conditions to recognize it as Startup shall make an online application over portal set up by the DPIIT.

(C) The application shall be accompanied copy of Certificate of Incorporation or Registration, as the case may be.

correct.

7. The Startup incorporated after 1.4.2016 but before the 1.4.2022 is eligible to apply to the Inter-Ministerial Board for a deduction of an amount equal to ..... derived from an eligible business by an eligible startup for ..... beginning from the year in which the eligible Startup is incorporated. However, the annual turnover must not exceed ..... in the previous year relevant to the assessment year for which deduction is claimed.

(A) 50% of the profits and gains; 5 consecutive assessment years out of 10 years; ₹ 50 Crore

(B) 100% of the profits and gains; 3 consecutive assessment years out of 10 years; ₹ 100 Crore

(C) 100% of the profits and gains; 5 consecutive assessment years out of 10 years; ₹ 100 Crore

(D) 50% of the profits and gains; 3 consecutive assessment years out of 10 years; ₹ 100 Crore

8. Angel Fund decides to invest in Ather Energy Pvt. Ltd. (Startup Company) engaged in production and distribution of two wheeler electric vehicles. Which of the following condition must be fulfilled by such Angel Fund before making investment in Startup under the Regulation 19F of the SEBI (Alternative Investment Funds) Regulations, 2012?

(A) Angel funds shall invest in Startups which are not promoted by an industrial group whose group turnover exceeds ₹ 600 Crore.

(B) Angel funds shall invest in Startups which are not sponsored by an industrial group whose group turnover exceeds ₹ 500 Crore.

(C) Angel funds shall invest in Startups which are not promoted or sponsored by or related to an industrial

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group whose turnover exceeds ₹ 750 Crore.

(D) Angel funds shall invest in Startups which are not promoted or sponsored by or related to an industrial group whose group turnover exceeds ₹ 300 Crore.

9. A unicorn is a term used to indicate a privately held Startup company with a valuation of over .....

(A) $1 billion

(B) $1 million

(C) $10 billion

(D) $1 thousand

10. In relation to ABC Private Ltd., a Startup Company, which of the following is not 'Deposit' as per the Companies (Acceptance of Deposit) Rules, 2014?

(A) An amount of ₹ 25 lakh or more received by a Startup company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 10 years from the date of issue) in a single tranche.

(B) An amount of ₹ 25 lakh or more received by a Startup company, by way of a convertible note (convertible into equity shares or repayable within a period exceeding 15 years from the date of issue) in a single tranche.

(C) An amount of ₹ 25 lakh or more received by a Startup company, by way of a convertible note (convertible into equity shares or repayable within a period exceeding 20 years from the date of issue) in a single tranche

(D) All of the above

Answers:

1.	(A)	2.	(A)	3.	(D)	4.	(A)	5.	(A)	6.	(D)	7.	(B)
8.	(D)	9.	(A)	10.	(A)								

5 : MICRO, SMALL & MEDIUM ENTERPRISES

1. Mr. D. K. Bose wishes to establish a medium enterprise which is engaged in manufacture of electrical equipment (*comes under Schedule 1 of IDRA*). He wants to know the course of action for establishing such medium enterprise. Choose the correct answer.

(A) He needs to get his enterprise recognized by DPIIT.

(B) He is required to file the memorandum of medium enterprise with District Industries Centre of the locality where he proposes to establish the enterprise.

(C) No such statutory requirements for establishing medium enterprise.

(D) He needs registration with MCA.

2. As per the Micro, Small & Medium Enterprises Development Act, 2006, 'Appointed Day' means:

(A) The day following immediately after the expiry of the period of 10 days from the day of acceptance of any goods or any services by a buyer from a supplier.

(B) The day following immediately after the expiry of the period of

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acceptance of any goods or any services by a buyer from a supplier.

(C) The day following immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

(D) The day following immediately after the expiry of the period of 30 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

3. Which of the following is Medium Enterprise under the Micro, Small & Medium Enterprises Development Act, 2006?

(A) ABC Pvt. Ltd. whose investment in plant & machinery and equipment is ₹ 40 Crore and turnover is ₹ 210 Crore.

(B) XYZ Pvt. Ltd. whose investment in plant & machinery and equipment is ₹ 49 Crore and turnover is ₹ 240 Crore.

(C) PQR Pvt. Ltd. whose investment in plant & machinery and equipment is ₹ 12 Crore and turnover is ₹ 105 Crore.

(D) All of the above

4. As per Section 20 of the Micro, Small & Medium Enterprises Development Act, 2006 which deals with "composition of Micro and Small Enterprises Facilitation Council", the MSE Facilitation Council shall consist of _____

(A) Not less than 3 but not more than 5 members

(B) not less than 2 but not more than 3 members

(C) not less than 5 but not more than 10 members

(D) not less than 2 but not more than 5 members

available to MSEs having valid NSIC registration?

(A) Exemption from payment of Earnest Money Deposit (EMD)

(B) Issue of the Tender Sets free of cost.

(C) Consortia facility for Tender Marketing.

(D) All of the above

6. Which of the following is not a MSME Scheme/Yojana implemented by the Central Government?

(A) Entrepreneurship & Skill Development Programme (ESDP) Scheme

(B) Coir Vikas Yojana

(C) Pradhan Mantri Bhima Yojana

(D) MSME Sambandh

7. Roshan is running a small factory at Satara in Maharashtra and he sold some goods to Kiran for ₹ 2 lakh. Later dispute arose and Kiran refused to make the payment to Roshan. The dispute was submitted to the Micro & Small Enterprises Facilitation Council. Such dispute must be decided by the Micro & Small Enterprises Facilitation Council within a period of –

(A) 30 days from the date of making such a reference.

(B) 90 days from the date of making such a reference.

(C) 60 days from the date of making such a reference.

(D) 120 days from the date of making such a reference.

8. As per Section 19 of the Micro, Small & Medium Enterprises Development Act, 2006, no application for setting aside any decree, award or other order made either by the Council itself or by any Institution or Centre providing Alternate Dispute Resolution services to which a reference is made by the Council, shall be entertained

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being a supplier) has deposited with it ..... of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such Court.

(A) 75%

(B) 50%

(C) 25%

(D) 80%

9. MSME Sambandh Portal is launched as the Public Procurement Portal, whose main objective is to monitor the implementation of the Public Procurement from MSEs by Central Public Sector Enterprises. The Public Procurement Policy for Micro and Small Enterprises (MSMEs) order 2012 has mandated every Central Ministry/ Department/PSU shall set an annual goal for procurement from the MSE sector at the beginning of the year, with procurement goal of minimum ..... of the total annual purchases from the products or services produced or rendered by MSEs.

(A) 25 per cent

(B) 10 per cent

(C) 35 per cent

(D) 50 per cent

10. ABC Pvt. Ltd., is engaged in manufacture of textiles. The Company has investment of ₹ 5 Crore and Turnover of ₹ 25 Crore. The Company wants to know their category as per definition of MSME.

(A) Medium Enterprise

(B) Small Enterprise

(C) Micro Enterprise

(D) Large Enterprise

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Answers:

1.	(B)	**2.**	(C)	**3.**	(D)	**4.**	(A)	**5.**	(D)	**6.**	(C)	**7.**	(B)
8.	(A)	**9.**	(A)	**10.**	(B)								

6 : CONVERSION OF BUSINESS ENTITIES

1. Which of the following alteration/ change will require prior approval of Central Government under Section 14 of the Companies Act, 2013?

(A) Change related to the addition or deletion of the word 'Private' to the name of the company consequent to the conversion of a private company into a public company and *vice versa*.

(B) Where a company being a private company alters its articles in such a manner that it no longer include the restrictions and limitations which are required to be included in the articles of a private company.

(C) Any alteration having the effect of conversion of a public company into a private company.

Company into Section 8 Company.

2. As per Section 18 of the Companies Act, 2013, a company of any class registered under the Act may convert itself as a company of other class by alteration of MOA and AOA of the company. Which of the following type of conversion is prohibited under the provisions of the Companies Act, 2013?

(I) Conversion of One Person Company to private company.

(II) Conversion of Section 8 Company into Public Company.

(III) Conversion of Section 8 Company into One Person Company.

(IV) Conversion from unlisted public company into limited liability partnership.

Select the correct answer from the options given below:

(A) (I) & (IV) only

(B) (II) & (III) only

(C) (III) only

(D) (II) only

3. Directors of Apar Pvt. Ltd. decides to convert in a Public Company. You are appointed as corporate advisor for conversion process. Choose which of the following is correct in relation to conversion of private company into public company.

(A) Form MGT-14 is not required to file with ROC.

(B) Notice shall be given at least 21 clear days before the actual date of General Meeting. Shorter notice cannot be issued even if the consent of majority of shareholders holding 95% of paid-up capital has been obtained as this provision is not applicable to private company.

(C) For giving effect to conversion of Private Company into Public Company, an application in Form Registrar of Companies.

(D) All of the above are incorrect.

4. You are the Company Secretary of Jogalekar Limited and directors of your company wants to convert the company into private limited. In conversion process which of the following step is not required to be adopted.

(A) To decrease the number of members below two hundred.

(B) To decrease the number of directors to two if there are five directors.

(C) To repay existing public deposit.

(D) The Articles of Association should be amended to add the restrictive provisions applicable to the Private Company.

5. The Company must draft an application for the conversion of Public Company into Private Company and file the same with the Regional Director within ..... from the date of passing of Special Resolution in ..... along with the prescribed fee.

(A) Sixty days; Form RD-1

(B) Thirty days; Form ROC-1

(C) Forty five days; Form RD-1

(D) Sixty days; Form RD-2

6. RTC Ltd. is converted into RTC LLP recently. Partners of the LLP ask you as to which of the following is not required to be complied by the LLP.

(A) Drafting of limited liability partnership agreement.

(B) Audit of accounts. Turnover of the LLP after conversion is ₹ 120 Crore.

(C) Holding minimum number of meetings.

(D) None of the above

7. Several businesses started in India as Partnership/Limited Liability Partnership (LLP), may now wish to convert into a

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private limited company for more growth in business or for infusing equity capital. In which of the following ways such Partnership/LLP may change itself into Company form of organization.

(A) Incorporation of a new corporate entity that will takeover the existing business of Partnership/LLP.

(B) Conversion of existing entity (LLP/Partnership Firm) into a Company.

(C) Partnership/LLP cannot be converted into Company as same is prohibited under the provisions of the Income-tax Act, 1961.

(D) Either (A) or (B) of the above.

8. Raman and Kapan are the two directors in RDX (OPC) Pvt. Ltd. They ask you to provide information as to number of board meeting required to be held by the OPC. Advise them suitably by choosing the one of following options:

(A) One Person Company is required to hold at least one meeting of the Board of Directors in each half of a financial year (April to March) and the gap between the two meetings should not be less than 90 days.

(B) One Person Company is required to hold at least two meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings should not be less than 120 days.

(C) One Person Company is required to hold at least one meeting of the Board of Directors in each half of a calendar year (January to December) and the gap between the two meetings should not be less than 90 days.

(D) One Person Company is required to hold at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings should not be less than 90 days.

9. Takila Pvt. Ltd. wants to convert the Private Company into a One Person Company (OPC). The Company seeks your advice on types of e-forms required to be filed with ROC for such conversion.

(A) Form MGT-14; Form INC-6

(B) Form INC-19; Form INC-20

(C) Form MGT-14; Form INC-20

(D) Form MGT-14; Form INC-25A; Form RD-1

10. PQR an association of persons registered as non-profit company under section 8 of the Companies Act, 2013. The association is considering the possibility of converting itself into private company or public company so that it can start commercial activities. The Company seeks your advice on types of e-forms required to be filed with ROC for such conversion.

(A) Form MGT-12; Form INC-18

(B) Form MGT-18; Form INC-12

(C) Form MGT-14; Form INC-18

(D) Form MGT-15; Form INC-18 & Form RD-1

Answers:

1.	(C)	2.	(C)	3.	(D)	4.	(B)	5.	(A)	6.	(C)	7.	(D)
8.	(C)	9.	(A)	10.	(C)								

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1. Minimum _____ persons are required to form partnership. Maximum number of partner is fifty whether it banking or any other business.

(A) Two; Fifty

(B) Three; Fifty

(C) Two; Hundred

(D) Three; Hundred

2. Aarayn is a Manager in KPIT & Co., a partnership firm. As a part of remuneration, the partners of the KPIT & Co. decided to give Aarayn a share of 5% in net profit after tax in profits of the business of partnership.

Choose the correct option.

(A) Aarayn becomes partner in profit only.

(B) Aarayn become partner by holding out.

(C) Aarayn does not thereby become a partner.

(D) Aarayn becomes partner by estoppel.

3. Pavan wants to set-up partnership business with Chetan and both decided that Pavan will bring capital of ₹ 5,00,000 and Chetan will bring capital of ₹ 3,00,000. They have not made Partnership Deed. Later dispute arose between the partners as to sharing of profits and losses of the Partnership Firm. Solve dispute between partners choosing correct answer out of the options given below.

(A) Pavan and Chetan shall share profit & losses in their capital ratio *i.e.* 5:3.

(B) Pavan and Chetan must share profit in their capital ratio *i.e.* 5:3 and loss has to shared in equal ratio.

(C) Pavan and Chetan shall share profit & losses equally.

(D) Pavan and Chetan shall share profit in their capital ratio *i.e.* 5:3 and loss in 3:5 ratio.

4. Ram and Parag are in partnership business of selling computer and computer software. They decided to bring capital of ₹ 5,00,000 each. Since Parag has funds of ₹ 3,00,000, he decided to borrow ₹ 2,00,000 from Jolly so that he can invest ₹ 5,00,000 in partnership firm. Parag also agreed with Jolly to share profit of 20% that he will receive as his share of profit from the firm.

Select the correct option.

(A) Jolly is partner by holding out.

(B) Jolly is partner by estoppel.

(C) Jolly is sub-partner of Parag.

(D) Jolly is sub-partner of both Ram and Parag.

5. Arun introduces Balu as a partner in his business to Chandan. Balu, in fact, was not a partner but he did not deny the statement. Chandan advanced a loan to Arun. Arun could not repay the loan. Balu is responsible for the repayment of loan because, Balu is a .....

(A) Partner by estoppel

(B) Sub-partner

(C) Partner by necessity

(D) Surety

6. Kamala and Vimala wants to start beauty parlor business in partnership. They both approach you to draft a partnership deed for their beauty parlor business. As a Practicing Company Secretary advice Kamala and Vimala on various clauses to be included in partnership deed keeping in view the

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Act, 1932.

(A) Names and permanent addresses of partners.

(B) Commencement and duration of partnership.

(C) Interest on capital, loans, drawings and current account.

(D) All of the above.

7. Anil, Baban & Chandan, who are partners of an unregistered firm, sell washing machine to Deepak for ₹ 10,000 on credit basis. After some time, the firm purchases form Deepak a photocopying machine for ₹ 40,000 on credit basis. On failure to pay the price, Deepak files a suit against the firm, but the firm insists that the amount of ₹ 10,000 should be adjusted against the claim in question.

(A) Firm cannot set-off any amount against the claim of Deepak.

(B) Firm can set-off ₹ 10,000 against amount of ₹ 40,000 payable to Deepak.

(C) Firm can set-off ₹ 100 against amount of ₹ 40,000 payable to Deepak.

(D) Firm can set-off ₹ 1,000 against amount of ₹ 40,000 payable to Deepak.

8. HFU of Sundar Gupta (Karta) consists of wife, two sons, one daughter and his two younger brothers. Which of the following statement is correct as to liability of members of HUF?

(A) The liability of Sundar Gupta (Karta) and his two sons is brothers is limited to their shares in the business.

(B) The liability of all members in HUF is unlimited irrespective of their shares in the business.

(C) The liability of Sundar Gupta (Karta) is unlimited while the liability of other members is limited to their shares in the business.

(D) Liability is only Sundar Gupta (Karta) and other members are not liable at all.

9. Mohan wants to from a society to help poor students so that they can get higher education. Tell him which of the following society can be registered under section of the Societies Registration Act, 1860?

(A) Military Orphan Funds

(B) Galleries of Painting

(C) Galleries of works of art

(D) All of the above

10. Promod and his various friends are about to form a Multi State Co-operative Society to deal in dairy products. Advice them selecting correct answer from the following option as to which form is required to be submitted for registration of Multi State Cooperative Society under the Multi State Cooperative Societies Rules, 2002.

(A) Form-1

(B) Form-A

(C) Form-1A

(D) Form-2

Answers:

1.	(A)	**2.**	(C)	**3.**	(C)	**4.**	(C)	**5.**	(A)	**6.**	(D)	**7.**	(C)
8.	(C)	**9.**	(D)	**10.**	(A)								

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1. Mr. Adhipati wants to obtain NBFC license from RBI. He wants to understand the concept principal business with respect to financial activities. Choose the correct answer.

(A) Company's financial assets constitute more than 75% of total assets.

(B) Income from financial assets constitute more than 75% of the gross income.

(C) Both (A) and (B) mentioned above.

(D) Company's financial assets constitute more than 50% of the total assets and income from financial assets constitutes more than 50% of the gross income.

2. Sakshi and her friends are in the process of incorporation a business organization to carry out non-banking financial activities. Choose the correct answer.

(A) In terms of Section 45-IA, registration of Non-Banking Financial Companies with the RBI is optional.

(B) A financial institution which is firm or association of person can be registered as NBFC.

(C) A financial institution which is a company can only be registered as NBFC.

(D) All of above statements are correct.

3. In October 2021, RBI notified scale-based regulations for NBFCs, which is effective from 1st October, 2022. As a Company Secretary of the Sabko Finance Ltd. (NBFC Company) make aware to Finance Manager of your company as which of the following comes under the 'Base Layer'.

A. Peer to Peer Lending Platform

B. Infrastructure Debt Fund

C. Account Aggregator

D. Standalone Primary Dealers

Select correct answer from the options given below.

(A) D & A

(B) B & D

(C) C & A

(D) A & B

4. In October 2021, RBI notified scale-based regulations for NBFCs, which is effective from 1st October, 2022. In this connection, the Middle Layer shall consist of –

(A) All deposit taking NBFCs, with asset size of ₹ 1,000 Crore and above.

(B) All non-deposit taking NBFCs with asset size of ₹ 1,000 Crore and above.

(C) NBFCs undertaking the activities of Standalone Primary Dealers, Infrastructure Debt Fund, Core Investment Companies, Housing Finance Companies and Infrastructure Finance Companies.

(D) All of the above.

5. XYZ Finance Ltd. (NBFC Company) is 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 equipments, moving on own power and general purpose industrial machines. XYZ Finance Ltd. will come in which following category?

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(IFC)

(B) Asset Finance Company (AFC)

(C) Leasing Company

(D) Economic Finance Company (EFC)

6. Infrastructure Finance Company (IFC) is a non-banking finance company which has a minimum –

(A) Paid-up capital and reserve not less than ₹ 100 Crore.

(B) Net Owned Funds of ₹ 300 Crore.

(C) Current & Non-current assets of ₹ 250 Crore or more.

(D) 90% of its total assets in the form of investment in equity shares, preference shares, debt or loans in group companies.

7. Reserve Bank of India (RBI) specifies ..... as Net Owned Fund (NOF) requirement for Non-Banking Financial Company – Micro Finance Institution (NBFC-MFI) with effect from October 01, 2022.

Select the correct answer from the options given below.

(A) ₹ 100 Crore

(B) ₹ 500 Crore

(C) ₹ 1,000 Crore

(D) ₹ 250 Crore

8. Indentify which of the following condition is applicable for "Non-Banking Financial Company – Micro Finance Institution (NBFC-MFI)"

(A) The financial assets in the factoring business should constitute at least 50% of its total assets.

are in the nature of "qualifying assets".

(C) Its asset size is ₹ 10 Crore or above

(D) It has a minimum credit rating of 'A' or equivalent.

9. You are Company Secretary of Aazad Finance Ltd. (NBFC Company). Tell Finance Manager of your company as to which of the following item is added while calculating 'Net Owned Fund' as per Explanation to Section 45-IA of RBI Act, 1934.

(A) Investments in shares of subsidiaries.

(B) Deferred revenue expenditure

(C) Other intangible assets.

(D) None of the above.

10. State whether the following Companies require registration as NBFC with Reserve Bank of India:

(*i*) Infrastructure Debt Fund Company

(*ii*) Asset Finance Company

(*iii*) Merchant Banking Companies

Select correct answer from the options given below:

	(*i*)	(*ii*)	(*iii*)
(A)	Yes	Yes	Yes
(B)	No	Yes	Yes
(C)	Yes	No	Yes
(D)	Yes	Yes	No

Answers:

1.	(D)	2.	(C)	3.	(C)	4.	(D)	5.	(B)	6.	(B)	7.	(A)
8.	(B)	9.	(D)	10.	(D)								

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1. Microsoft Corporation manufactures 'Surface Pro 4' laptops. Microsoft Corporation made agreement with Intel Corporation by which 'Surface Pro 4' laptops will be sold to buyers with some of pre-installed software of Intel Corporation. Such type of business collaboration of Microsoft Corporation with Intel Corporation is known as –

(A) Horizontal Collaboration

(B) Vertical Collaboration

(C) Intersectional Collaboration

(D) Equity sharing Collaboration

2. The main intention/prime goal or objective of foreign collaboration is to:

(A) Reduce the higher operating cost of a non-resident entity.

(B) Improve the financial growth of the collaborating entities.

(C) Make an optimum and effective use of resources available in the resident entity's country.

(D) All of the above

3. Google Inc. made huge investment in Reliance Retail Ltd. in order to get dividend income considering vast future expansion and growth in the business of Reliance Retail Ltd. This investment agreement also benefited Reliance Retail Ltd. to grow its business as lot of funds will be available for making capital investments and expansion programmes. Selecting correct answer from the options given below suggests in which of the following type such financial collaboration comes?

(A) Giving long-term loans

(B) Purchasing ownership shares

(C) Management consultancy collaboration

(D) Giving credit facility

4. In management consultancy collaboration, foreign company provides management skills to the domestic company and teaches it everything about management. In other words, it gives advice and solves management problems of the domestic company. It teaches management skills for the following:

(1) Production management

(2) Marketing management

(3) Personnel management

(4) Financial management

Select correct answer –

(A) (1) & (4) only

(B) (2) & (3) only

(C) (1), (2) & (3) only

(D) (1), (2), (3) & (4)

5. Maruti Suzuki Ltd. and Toyota India Ltd. decided to form a new entity for manufacture of Electric Cars in India. Both companies will invest 50% share capital of the new entity. Such type of joint venture between Maruti Suzuki Ltd. and Toyota India Ltd. is called as –

(A) Equity based joint venture

(B) Equal joint venture

(C) Common joint venture

(D) Investment joint venture

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Answers:

1.	(B)	2.	(D)	3.	(B)	4.	(D)	5.	(A)

10 : SETTING-UP OF BRANCH OFFICE/LIAISON OFFICE/ WHOLLY OWNED SUBSIDIARY BY FOREIGN COMPANY

1. DMH Inc., a foreign company wants to establish Liaison Office engaged in construction and development sector for a period of 4 years in India. Guide the manager of DMH Inc. regarding the same by choosing the right course of action.

(A) Validity period of a Liaison office of DMH Inc. is 3 years.

(B) Validity period of a Liaison office of DMH Inc. is 2 years.

(C) DMH has to take RBI approval.

(D) Liaison office can be established for 4 years.

2. Where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference of a foreign company is held by one or more citizens of India or by one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of the Act, as may be prescribed by the Central Government with regard to the business carried on by it in India, as if it were a company incorporated in India. This provision is made in –

(A) 379 of the Companies Act, 2013

(B) 279 of the Foreign Exchange Management Act, 1999

(C) 479 of the Companies Act, 2013

(D) 379 of the Foreign Exchange Management Act, 1999

3. Google Inc., a foreign company wants to establish Branch Office in India at Pune. Guide the manager of Google Inc. regarding net worth requirement by choosing the right answer from the options given below.

(A) The net worth of the branch office must not be less than US$ 10,000.

(B) The net worth of the branch office must not be less than US$ 50,000.

(C) The net worth of the branch office must not be less than US$ 1,00,000.

(D) The net worth of the branch office must not be less than US$ 2,00,000.

4. The RBI has given general permission to foreign companies to set up Branch Offices (BOs) in Special Economic Zones (SEZs) subject to the following conditions that such BOs are functioning in those sectors where –

(A) 100 per cent FDI is permitted

(B) 75 per cent FDI is permitted

(C) 50 per cent FDI is permitted

(D) 25 per cent FDI is permitted

5. The net worth of the liaison office must not be less than –

(A) US$ 1,00,000

(B) US$ 50,000

(C) US$ 25,000

(D) US$ 1,50,000

Answers:

1.	(A)	2.	(A)	3.	(C)	4.	(A)	5.	(B)

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11 : SETTING-UP OF BUSINESS OUTSIDE INDIA AND ISSUE RELATING THERETO

1. Directors of the XYZ Ltd. decide to make direct investments outside India. You are required to identify in which of the following overseas direct investments is prohibited under the FEM (Overseas Investment) Rules, 2022.

(I) Overseas direct investments real estate activity

(II) Overseas direct investments dealing with financial products linked to the Indian rupee

(III) Overseas direct investments in startups from the internal accruals

(IV) Overseas direct investments in development of townships

Select correct answer from the options given below –

(A) (I) & (II)

(B) (II) & (III)

(C) (I) & (III)

(D) (II) & (IV)

2. The mode of payment by a person resident in India for making overseas investment shall be in accordance with Regulation 8 of the FEM (Overseas Investment) Regulations, 2022. Which of the following mode of payment is not permitted under the said Regulations?

(A) by remittance made through banking channels

(B) by way of cash

(C) by swap of securities

(D) (B) and (C)

3. Sumit Thapar is an Indian businessmen dealing in manufacturing of antique designer jewels. He has retail shops across all major cities in India. He wants to diversify his business geographically and plans to open retail outlets outside India. Which of the following aspects he should look into in choosing investment locations outside India?

(A) Geographical Location of the business

(B) Economic & Political Aspects

(C) Social & Technological Aspects

(D) All of the above

4. Aadarsh Education Society, engaged in education sector, intends to make investment in the education sector in a joint venture in USA. It must comply with –

(A) Schedule IV of the FEM (Overseas Investment) Rules, 2022

(B) Condition that Society should have been in existence for at least 2 financial years before the year in which such investment is being made

(C) Both (A) and (B)

(D) Neither (A) nor (B)

Answers:

1.	(D)	2.	(B)	3.	(D)	4.	(A)

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12 : IDENTIFYING LAWS APPLICABLE TO VARIOUS INDUSTRIES AND THEIR INITIAL COMPLIANCES

1. Ram & Shyam started Limited Liability Partnership business of manufacturing of Tea and Tea related products. They requires you advice as to tax rate applicable for the LLP.

(A) 30% plus surcharge and cess.

(B) 25% plus surcharge and cess.

(C) 15% plus surcharge and cess.

(D) 30% of income in excess of ₹ 2,50,000 plus surcharge and cess.

2. EPF Registration has to be done within one month from the date of reaching –

(A) 5 employees

(B) 10 employees

(C) 15 employees

(D) 20 employees

Answers:

1.	(A)	2.	(D)

13 : VARIOUS INITIAL REGISTRATIONS AND LICENSES

1. Any business entity doing business in India requires a PAN (Permanent Account Number) whether it is registered in India or not. Mr. Satish who has just completed his graduation has decided to start jewellery shop in Kanpur. He wants to take Permanent Account Number. Advise him by choosing correct answer from the options given below:

(A) PAN is 8-character alpha-numeric identifier.

(B) Foreign entities are not required to take PAN for carrying out their business activities in India.

(C) If you are considering investing in securities, you would have to furnish your PAN details for any transactions amounting to above ₹ 50,000

(D) None of the above

2. Details of some traders/businessman are given below:

- Mr. X, an agriculturist who supply produce out of cultivation of his land. His turnover is ₹ 2.1 Crore.
- Mr. Y, engaged in business of retail supply of goods that is wholly exempt from tax. His turnover is ₹ 3 Crore.
- Mr. Z, a person engaged in the business of supplying services that is not liable to tax. His turnover is ₹ 5 Crore.

Choose correct option and determine who among above is required to be registered under the GST Law.

(A) Mr. X, Mr. Y & Mr. Z all are required to be registered as turnover all the traders/businessman exceeds ₹ 2 Crore.

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to be registered as their turnover exceeds threshold limit prescribed under the GST Law.

(C) All the three traders/businessman are required to be registered under Section 23 of the Central Goods & Services Tax Act, 2017.

(D) Mr. X, Mr. Y & Mr. Z, all are not required to be registered.

3. Mr. Rahul Khanna has taken voluntary registration under the Central Goods & Services Tax Act, 2017. However, due to some difficulties he is not able to commence his business. As consultant he ask you – within what time he must commence his business so that Proper Officer may not cancel *suo motu* his registration.

(A) Within 6 months from the date of registration.

(B) Within 3 months from the date of registration.

(C) There is no provision in GST Law as to cancellation of registration *suo motu* by the Proper Officer.

(D) Mr. Rahul Khanna can start his business at any time after taking voluntary registration.

4. Which of the following categories of persons are required to obtain compulsory registration under the Central Goods & Services Tax Act, 2017?

(A) Casual taxable person

(B) Input Service Distributor

(C) E-commerce operator

(D) All of the above

5. In GST registration, the supplier is allotted _____ called 'GSTIN' and a certificate of registration incorporating therein this GSTIN is made available to the applicant on the GSTN common portal.

(A) 15-digit GST Identification Number

(B) 15-digit GST Identification Number

(C) 12-digit GST Identification Number

(D) 20-digit GST Identification Number

6. Rajesh is planning to start a small manufacturing business in Pune City. As per his estimate his turnover in first is likely to be up to ₹ 65 lakh. How much GST Rajesh will be required to pay in first year of business if opts for Composition Scheme?

(A) ₹ 65,00,000 × 1% = ₹ 65,000

(B) ₹ 65,00,000 × 5% = ₹ 3,25,000

(C) ₹ 65,00,000 × 6% = ₹ 3,90,000

(D) ₹ 65,00,000 × 2.5% = ₹ 1,62,500

7. PT Pvt. Ltd., is engaged in the business of textile related products and employs 21 employees. All 21 employees draw a monthly salary of ₹ 20,000 each. How much contribution PT Pvt. Ltd. must deduct from the total monthly salary payable to the employee under the Employees State Insurance (ESI) Act, 1948?

(A) ₹ 20,000 × 1.75% × 21 = ₹ 7,350

(B) ₹ 20,000 × 0.75% × 21 = ₹ 3,150

(C) ₹ 20,000 × 3.75% × 21 = ₹ 15,750

(D) ₹ 20,000 × 4.25% × 21 = ₹ 17,850

8. Mr. Ganpati wants to run a general chemist shop at Ghaziabad. He wants to know the requirement regarding how to start a general chemist business. Choose the correct option:

(A) He can straight away start his chemist shop by obtaining Shops and Establishment Registration.

(B) He needs to obtain permission from the State Government and requires a shop with minimum of 20 sq. m. area.

(C) He needs to obtain retail drug license and a shop with minimum area of 10 sq. m.

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license and a shop with minimum area of 15 sq. m.

9. Ramesh is going to setup a breeding, storing and packaging Chicken Products. He is in the process of obtaining the registration and license of the Food Business Operators (FBO). FSSAI registration is required for Petty Food Business Operator having slaughtering capacity –

(A) 100 poultry birds per day or more

(C) 75 poultry birds per day or less

(D) 200 poultry birds per day or less

10. The minimum paid-up voting equity capital for a bank shall be ..... for universal banks and ..... for small finance banks.

(A) ₹ 1,000 Crore; ₹ 500 Crore

(B) ₹ 500 Crore; ₹ 100 Crore

(C) ₹ 500 Crore; ₹ 200 Crore

(D) ₹ 250 Crore; ₹ 100 Crore

Answers:

1.	(C)	2.	(D)	3.	(A)	4.	(D)	5.	(A)	6.	(A)	7.	(B)
8.	(C)	9.	(B)	10.	(C)								

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14 : CONSTITUTION AND LABOUR LAWS

1. The goals and values proclaimed under ..... of the Constitution are to be effectuated consistent with the fundamental rights enshrined in ..... of the Constitution.

(A) Part IV; Part III

(B) Part III; Part IV

(C) Part II; Part III

(D) Part III; Part V

2. ..... of the Constitution confers writ jurisdiction on Supreme Court and High Courts respectively for enforcement and protection of fundamental rights of an individual.

(A) Articles 32 and 226

(B) Articles 33 and 227

(C) Articles 226 and 32

(D) Articles 227 and 33

3. A large number of the employees of the irrigation department were declared surplus. The Trade Union challenged it in this writ petition. The Single Bench held that the petition is not maintainable holding that the fundamental rights of the individual are not the rights of the union. On appeal, the Division Bench reversed it and sent back to the Single Bench for disposal of the writ petition in accordance with the merits of the case. This issue was discussed in –

(A) *S. P. Gupta* v. *President of India*

(B) *Jaipur Division Irrigation Employees Union* v. *State of Rajasthan*

(C) *State of Mysore* v. *Workers of Gold Mines*

(D) *Air India* v. *Nargesh Meerza*

4. In the case of the ..... Regulations 46 and 47 of Indian Airlines regulations was in question which provides that an air Hostess will retire from the service upon attaining the age of 35 years or on marriage within 4 years of Service or on first pregnancy,

director had the discretion that he may extend the age of retirement one year at a time beyond the age of retirement up to the age of 45 years at his option if an air hostess was found medically fit. It was held by the court that the clauses regarding retirement and pregnancy of the regulation as unconstitutional and therefore struck down. The retirement of air hostess on the ground of pregnancy was unreasonable and arbitrary and it was in violation of Article 14 of the constitution law of India.

(A) *D. S. Nakara* v. *Union of India*, (1983 AIR 130)

AIR 1829)

(C) *Jaipur Division Irrigation Employees Union* v. *State of Rajasthan* (1994) IILLJ 26 Raj

(D) *S. P. Gupta* v. *President of India* (AIR 1982 SC 149)

5. Which of the case deals with the doctrine of 'Equal Pay for Equal Work'?

(A) *S. P. Gupta* v. *President of India*

(B) *State of Mysore* v. *Workers of Gold Mines*

(C) *Mewa Ram Kanojia* v. *All India Institute of Medical Sciences others*

(D) *D. S. Nakara* v. *Union of India*

Answers:

1.	(A)	**2.**	(A)	**3.**	(B)	**4.**	(B)	**5.**	(C)

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15 : EVALUATION OF LABOUR LEGISLATION & NEED OF LABOUR CODE

1. The benefits of 'labour audit' to the labour are —

(A) It increases their social security.

(B) It inculcates in workers a sense of belongingness towards their employer.

(C) It secures timely payment of wages, bonus, overtime and compensation, *etc.*, of workers.

(D) All of the above. *[Dec. 2015]*

2. Labour audit provides benefits to the labour, to the employer and to the Government. Which one of the following is not a benefit of labour audit to the labour —

(A) Labour audit boosts the morale of the workers.

(B) It increases social security of the labour.

(C) It increases status of employer in society.

(D) Labour audit secures timely payment of wages. *[June 2016]*

3. Which one of the following will not be included in the list of legislations that may be brought under the ambit of labour audit —

(A) Payment of Wages Act, 1936

(B) Payment of Bonus Act, 1965

(C) Industrial Disputes Act, 1947

(D) Apprentices Act, 1961

[Dec. 2016]

(A) Avoiding of any unwarranted legal actions against the organization and its management

(B) Better Governance

(C) Value creation for the organization

(D) All of the above *[June 2017]*

5. Which one of the following statement is not correct as regards to the benefits of Labour audit?

(A) Compulsory Labour Audit will not ensure compliance of past defaults.

(B) Labour Audit increases the social security to the Labour.

(C) It will secure timely payment of wages to the Labour.

(D) Timely payment of entitlements will reduce absenteeism in the organization *[Dec. 2017]*

6. Which one of the following legislation does not come under the purview of Labour audit?

(A) Payment of Gratuity Act, 1972

(B) Apprentices Act, 1961

(C) Factories Act, 1948

(D) Employees Compensation Act, 1923 *[June 2018]*

(A) Fact finding

(B) Ensure compliance of past default

(C) Increase productivity

(D) All of the above *[Dec. 2018]*

8. Which of the following law is related to 'Industrial Relations'?

(A) Trade Unions Act, 1926

(B) Payment of Wages Act, 1936

(C) Plantation Labour Act, 1951

(D) Working Journalists (Fixation of Rates of Wages) Act, 1958

9. Which of the following law is related to 'Wages'?

(A) Payment of Bonus Act, 1965

(B) Working Journalists (Fixation of Rates of Wages) Act, 1958

(C) Both (A) and (B)

(D) Neither (A) nor (B)

10. Which of the following Act will be subsumed in the Industrial Relations Code, 2019?

(A) Dock Workers (Safety, Health and Welfare) Act, 1986

(B) Sales Promotion Employees (Condition of Service) Act, 1976

(C) Equal Remuneration Act, 1976

(D) None of the Above

Answers:

1.	(D)	**2.**	(C)	**3.**	(D)	**4.**	(D)	**5.**	(A)	**6.**	(B)	**7.**	(D)
8.	(A)	**9.**	(C)	**10.**	(D)								

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1. As per the Factories Act, 1948 any engine, motor or other appliance which generates or otherwise provides power is defined as _____

(A) Prime Mover

(B) Power

(C) Transmission Machinery

(D) Machinery *[Dec. 2014]*

2. A premises including precincts thereof is a 'factory' within the meaning of the Factories Act, 1948 whereon ..... are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; or whereon ..... are working, or were working on a day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

(A) 10 or more workers; 20 or more workers

(B) 20 or more workers; 10 or more workers

(C) 10 or more workers; 100 or more workers

(D) 15 or more workers; 20 or more workers *[Dec. 2014]*

3. As per the Factories Act, 1948 'adolescent' means a person who has completed:

(A) 18th year but not completed 21st year

(B) 15th year but not completed 18th year

(C) 16th year but not completed 18th year

(D) 15th year but not completed 21st year *[Dec. 2019]*

4. As per Section 16 of the Factories Act, 1948 the minimum space to be allocated to each worker employed in the factory is _____

(A) 12.2 cubic metres

(B) 13.2 cubic metres

(C) 14.2 cubic metres

(D) 15.2 cubic metres *[Dec. 2014]*

5. As per Section 90 of the Factories Act, 1948 the State Government may, if it considers it expedient to do so, appoint a competent person to inquire into the causes of any accident occurring in a factory or into any case where a disease specified in _____ has been, or is suspected to have been contracted in the factory.

(A) First schedule and second schedule

(B) Second schedule and sixth schedule

(C) Third schedule

(D) Fifth schedule *[Dec. 2014]*

6. Under section 40B of the Factories Act, 1948 in every factory, wherein ..... or more workers are ordinarily employed, or wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, where process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, the occupier shall, if so required by the State Government by notification in the Official Gazette, employ such number of ..... as may be specified in that notification.

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(A) One thousand; safety officers

(B) Five hundred; health officers

(C) Four hundred; welfare officers

(D) Two hundred; inspection officers. *[Dec. 2014]*

7. As per Section 53 of the Factories Act, 1948 where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of weekly holidays, a worker deprived of any of the weekly holidays for which provision is made, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, _____ of equal number to the holidays so lost.

(A) Earned leave

(B) Restricted holidays

(C) Compensatory holidays

(D) Accumulated leave *[Dec. 2014]*

8. As per Section 48 of the Factories Act, 1948 in every factory wherein more than ..... women workers are ordinarily employed, the facility of suitable room or rooms should be provided and maintained for the use of children under the age of ..... of such women.

(A) 30; six years

(B) 50; five years

(C) 75; seven years

(D) 100; five years *[Dec. 2014]*

9. The 'occupier' of a factory under the Factories Act, 1948 is required to appoint a Welfare Officer where number of workers employed are _____

(A) 200

(B) 300

(C) 400

(D) 500 or more *[Dec. 2014]*

10. Section 21 of the Contract Labour (Regulation & Abolition) Act, 1970 provides that a _____ shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed and every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to _____ the amount paid as wages in such manner as may be prescribed.

(A) Principal employer; grant

(B) Contractor; deduct

(C) Contractor; certify

(D) Principal employer; authorize *[Dec. 2014]*

11. Section 16 of the Contract Labour (Regulation and Abolition) Act, 1970 requires that in every establishment to which this Act applies, wherein contract labour numbering 100 or more is ordinarily employed by a contractor and the employment of the contract labour is likely to continue for such period as may be prescribed, the contractor for the use of such contract labour shall provide and maintain one or more —

(A) Guard rooms

(B) Crèches

(C) Canteens

(D) Gyms *[Dec. 2014]*

12. As per schedule to the Child & Adolescent Labour (Prohibition & Regulation) Act, 1986, bidi making and agarbatti manufacturing are treated as _____

(A) Occupations set forth in Part-A of the Schedule

(B) Processes set forth in Part-B of the Schedule

(C) Occupations set forth in Part-B of the Schedule

(D) Processes set forth in Part-A of the Schedule *[Dec. 2014 & June 2015]*

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Adolescent Labour (Prohibition & Regulation) Act, 1986 the period of work on each day shall be so fixed that no period shall exceed _____ and no child shall work for more than _____ before he has had an interval for rest for at least one hour.

(A) 8 hours; 8 hours

(B) 5 hours; 5 hours

(C) 3 hours; 3 hours

(D) 4 hours; 4 hours *[Dec. 2014]*

14. As per Section 12 of the Child & Adolescent Labour (Prohibition & Regulation) Act, 1986 every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the _____ containing an abstract of _____

(A) Regional language; sections 3 and 14

(B) Hindi language; sections 4 and 15

(C) English language; sections 5 and 16

(D) English language; sections 3 and 14 *[Dec. 2014]*

15. The violation of Section 3 of the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 shall be punishable with imprisonment for a term not less than _____ but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to _____ or with both.

(A) One month; ten thousand rupees

(B) Three months; twenty thousand rupees

(C) Six months; twenty-five thousand rupees

(D) Nine months; fifty thousand rupees *[Dec. 2014]*

the term 'precincts' is known as —

(A) A space enclosed by walls

(B) Part of factory

(C) Subsidiary of factory

(D) Walls of the factory *[June 2015]*

17. Which of the following is empowered under Section 41D of the Factories Act, 1948 to appoint an Inquiry Committee in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory —

(A) Central Government

(B) State Government

(C) Occupier of the factory

(D) Inspector of the factory *[June 2015]*

18. Any unpaid wages due to the workers under the Chapter VII (*annual leave with wages*) of the Factories Act, 1948 can be recovered as delayed wages under the provisions of the —

(A) Minimum Wages Act, 1948

(B) Payment of Wages Act, 1936

(C) Equal Remuneration Act, 1976

(D) Payment of Bonus Act, 1965 *[June 2015]*

19. Under section 55 of the Factories Act, 1948, an adult worker shall not work continuously for more than five hours unless he has had a rest interval of at least —

(A) One hour

(B) 45 minutes

(C) Half an hour

(D) Two hours *[June 2015]*

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Factories Act, 1948 a woman shall not be allowed to work in any factory except between the hours of —

(A) 6 A.M. and 7 P.M.

(B) 6 A.M. and 9 P.M.

(C) 8 A.M. and 9 P.M.

(D) 8 A.M. and 8 P.M. *[June 2015]*

21. Section 36A of the Factories Act, 1948 provides that in any factory no portable electric light or any other electric appliance of voltage exceeding _____ shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided.

(A) 42 Volts

(B) 24 Volts

(C) 50 Volts

(D) 100 Volts *[June 2015]*

22. Section 28 of the Factories Act, 1948 provides that in a factory, every hoist and lift shall be properly maintained and thoroughly examined by a competent person at least once in every period of —

(A) Three months

(B) Six months

(C) Nine months

(D) Twelve months *[June 2015]*

23. Under section 2(*d*) of the Factories Act, 1948, 'young person' means a person who —

(A) Is either an adult or an adolescent

(B) Has completed his eighteen years of age

(C) Is either a child or an adolescent

(D) All of the above *[Dec. 2015]*

24. As per section 16 of the Contract Labour (Regulation and Abolition) Act, 1970 in every establishment wherein contract labour numbering 100 or more is ordinarily employed by a contractor, the contractor is required to provide contract labour.

(A) One or more rest rooms

(B) One or more canteens

(C) Crèches

(D) First-aid facilities

[June 2015]

25. Under the Contract Labour (Regulation and Abolition) Act, 1970 the principal employer of an establishment can employ contract labour if —

(A) The principal employer has not obtained the certificate of registration.

(B) The work is of urgent nature.

(C) The work is of perennial nature.

(D) The work provides instant employment to a considerable number of unemployed persons.

[June 2015]

26. The limitation period of prosecutions under section 27 of the Contract Labour (Regulation and Abolition) Act, 1970 is —

(A) Three years

(B) One year

(C) Nine months

(D) Three months *[June 2015]*

27. The Contract Labour (Regulation and Abolition) Act, 1970 applies to every establishment/contractor in which _____ or more workmen are employed or were employed on any day of the preceding twelve months as contract labour —

(A) 7

(B) 10

(C) 15

(D) 20 *[June 2015]*

28. Under section 2(*ii*) of the Child & Adolescent Labour (Prohibition & Regulation) Act, 1986 a person who has not completed his fourteenth year of age is defined as —

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(B) Child

(C) Adolescent

(D) Young *[June 2015]*

29. According to the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 prohibition of employment of children is not applicable to any workshop wherein any process is carried on by the occupier —

(A) With the aid of his family

(B) With the aid of foreign government

(C) With the aid of his friends

(D) With the aid of public *[June 2015]*

30. The first aid facilities to be provided and maintained by the contractor at every place where contract labour is employed by him is made mandatory in the Contract Labour (Regulation and Abolition) Act, 1970 under —

(A) Section 19

(B) Section 18

(C) Section 17

(D) All of the above *[Dec. 2015]*

31. The Contract Labour (Regulation and Abolition) Act, 1970 applies to every establishment or contractor wherein 20 or more workmen are or were employed as contract labour on any day of the preceding —

(A) Fifteen months

(B) Fourteen months

(C) Sixteen months

(D) Twelve months *[Dec. 2015]*

32. Provision of penalty for employing any child or permitting any child to work in contravention of the provisions of section 3 of the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 is given in —

(A) Section 13

(B) Section 14

(D) Section 18 *[Dec. 2015]*

33. The Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 seeks to achieve which of the following objectives:

(1) To ban the employment of children below 14 years of age in factories, mines and hazardous employments.

(2) To regulate the conditions of work of children in employment where they are not prohibited from working.

(3) To obtain uniformity in the definition of 'child' in the related laws.

Which of the above is/are correct —

(A) Only (1)

(B) Only (2)

(C) Only (3)

(D) All of the above *[Dec. 2015]*

34. Prohibition of employment of children under section 3 of the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 shall not be applicable to —

(A) Any workshop wherein any process is carried on by the occupier with the aid of his family

(B) Any school established by or receiving assistance or recognition from government

(C) Both (A) and (B) above

(D) Neither (A) nor (B) *[Dec. 2015]*

35. Section 7 of the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 stipulates that:

(1) No child shall be permitted to work between 7 p.m. and 8 a.m.

(2) No child shall be permitted to work overtime.

(3) No child shall be required to work in any establishment on any day on which he has already been working in another establishment.

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Which of the above is incorrect :

(A) Only (1)

(B) Only (2)

(C) Only (3)

(D) None of the above *[Dec. 2015]*

36. According to the definition of 'factory' given in section 2(*m*) of the Factories Act, 1948, which of the following is not included in the term 'factory' —

(A) Mines

(B) Railway running sheds

(C) Hotels, restaurants and eating places

(D) All of the above *[Dec. 2015]*

37. The word 'premises' under section 2(*m*) of the Factories Act, 1948 is a generic term meaning open land or land with buildings or buildings alone. The legislature had no intention to discriminate between workers engaged in manufacturing process in a building and those engaged in such a process on an open land. Thus, the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word 'premises'. It was observed by the Supreme Court of India in the case of —

(A) *Ardeshir H. Bhiwandiwala* v. *State of Bombay*

(B) *Bharati Udyog* v. *Regional Director E.S.I. Corporation*

(C) Both (A) and (B) above

(D) Neither (A) nor (B) *[Dec. 2015]*

38. Factory is a premise where a manufacturing process in carried on. The process undertaken in zonal station, sub-stations and electricity generating stations, transforming and transmitting electricity generated at the power stations does not fall within the definition of manufacturing process as the workmen employed therein have no part in any manufacturing process. This view was expressed by the Supreme Court of India in —

(A) *Workmen of U.P. Electricity Supply Co.*

(B) *Workmen of Delhi Electric Supply Undertaking* v. *Management of D.E.S.U.*

(C) *Agra Electric Supply Co. Ltd., Agra* v. *Workmen of Agra Electricity Co. Ltd.*

(D) None of the above *[Dec. 2015]*

39. Every occupier of factory shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory. In which of the following sections of the Factories Act, 1948 has it been provided —

(A) Clause (*1*) of section 7A

(B) Clause (*a*) of section 7B

(C) Both (A) and (B) above

(D) Neither (A) nor (B) *[Dec. 2015]*

40. Provision of penalty for permitting double employment of a child by parents or guardians has been stipulated in the Factories Act, 1948 under —

(A) Section 93

(B) Section 95

(C) Section 96

(D) Section 99 *[23 Dec. 2015]*

41. Under section 69 of the Factories Act, 1948 before employing a young person in the factory, a certificate has to be obtained from certifying surgeon that such young person is fit for that work in the factory. Who can apply for obtaining such fitness certificate:

(1) Young person himself

(2) His parent or guardian

(3) Manager of the factory

Which of the above is incorrect —

(A) Only (1)

(B) Only (2)

(C) Only (3)

(D) None of the above *[Dec. 2015]*

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Appraisal Committee constituted by the State Government under section 41A of the Factories Act, 1948 —

(A) Inspector General of Police

(B) Principal Secretary of Environment

(C) Chief Inspector of the State

(D) None of the above *[Dec. 2015]*

43. The provision that no adult worker shall be allowed to work in a factory for more than forty eight (48) hours in any week, is made under which of the following sections of the Factories Act, 1948 —

(A) Section 51

(B) Section 51A

(C) Section 52

(D) None of the above *[Dec. 2015]*

44. The Factories Act, 1948 is a social legislation and it provides for the health, safety, welfare and other aspects of the workers employed in the factories. This view has been expressed by the Rajasthan High Court in the case of —

(A) *Sajjan Singh* v. *State of Rajasthan*

(B) *State of Rajasthan* v. *Union of India*

(C) *Ravi Shankar Sharma* v. *State of Rajasthan*

(D) None of the above *[Dec. 2015]*

45. Which one of the following is not welfare provisions under the Factories Act, 1948 —

(A) Canteen

(B) Crèches

(C) Alcoholic beverage

(D) Drinking water *[June 2016]*

46. Section 2 (*n*) of the Factories Act, 1948 defines the term 'occupier' as a person who has ultimate control over the affairs of the factory. In the light of the definition of occupier, in the case of a company—

deemed to be the occupier.

(B) Any one of the directors shall be deemed to be the occupier.

(C) Any senior officer of the company shall be deemed to be the occupier.

(D) Any responsible and trusted employee who stays at the factory premises throughout day and night shall be deemed to be the occupier. *[June 2016]*

47. Which one of the following statement is true under the provisions of the Factories Act, 1948 —

(A) For the purpose of cleanliness, the office of the factory must be kept clean and free from effluvia arising from any drain or nuisance.

(B) Where the work carried on in the factory generates excessively high temperature, such process should be separated from the work room.

(C) Artificial humidification is required for carrying out every type of manufacturing process.

(D) Sufficient number of spittoons situated at convenient places is a mandatory condition where more than 1,000 workers are ordinarily employed in a factory. *[June 2016]*

48. The administration of the Factories Act, 1948 is carried out through Inspecting Staff, Certifying Surgeon, Welfare Officer and Safety Officer. In this relation read the following statements:

(*i*) The Chief Inspector of factories is appointed by the Central Government.

(*ii*) In every district the Sessions Judge shall be deemed to be an Inspector for his district.

(*iii*) The primary function of a "Certifying Surgeon" is to make examination of the premise, plant

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registers and records.

(*iv*) Under section 40B of this Act, appointment of Safety Officer is not mandatory in every factory.

Select the correct answer from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*i*) only

(D) (*iv*) only *[June 2016]*

49. In which case, the Supreme Court held the process undertaken in zonal and sub-stations, transforming and transmitting electricity generated at the power station does not fall within the definition of 'manufacturing process' and could not be said to be a 'factory'—

(A) *Workmen of Delhi Electric Supply Undertaking* v. *Management of Delhi Electric Supply Undertaking.*

(B) *R.E. D'souza* v. *Krishnan Nair*

(C) *V.P. Gopala Rao* v. *Public Prosecutor*

(D) *P. Natrajan* v. *E.S.I. Corporation.* *[June 2016]*

50. Which one of the following statement is not correct as per section 2 of the Factories Act, 1948 —

(A) 'Child' means a person who has not completed his 15th year of age.

(B) 'Power' does not include the power generated by human or animal agency.

(C) 'Adolescent' is a person who has completed his 14th year of age but has not completed his 20th year.

(D) The term 'machinery' includes prime movers, transmission machinery and all other appliances where by power is generated, transformed, transmitted or applied. *[June 2016]*

51. Which one of the following is not an essential element of a factory —

(B) There must be a manufacturing process being carried on at the premises.

(C) There must be 10 or more workers where the manufacturing process is being carried on with the aid of power.

(D) There are installed electronic data processing units. *[June 2016]*

52. Which one of the following statement is incorrect under the Contract Labour (Regulation & Abolition) Act, 1970 —

(A) The Act does not apply to establishments in which work only of intermittent or casual nature is performed.

(B) 'Workman' does not include a person who is employed mainly in administrative capacity or who is an out-worker.

(C) The Tribunals enjoy jurisdiction to abolish contract labour.

(D) Before revoking registration of establishment/contractor the registering officer is required to obtain previous approval of the appropriate government. *[June 2016]*

53. Under section 27 of the Contract Labour (Regulation and Abolition) Act, 1970 where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made —

(A) Within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector.

(B) Within six months from the date on which the offence is alleged to have been committed.

(C) Anytime before the expiry of one year from the date on which offence is alleged to have been committed.

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itation applies to such cases. *[June 2016]*

54. Section 7 of the Child & Adolescent Labour (Prohibition & Regulation) Act, 1986 stipulates that no child shall be permitted or required to work between—

(A) 6.00 P.M. and 12.00 midnight

(B) 6.00 A.M. and 6.00 P.M.

(C) 8.00 A.M. and 4.00 P.M.

(D) 7.00 and 8.00 A.M. *[June 2016]*

55. Which one of the following statement is incorrect as per the provisions of the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 —

(A) The provisions of the Act are consistent with the provisions of the Constitution of India.

(B) The Act prohibits the engagement of children below the age of 14 years in factories, mines and hazardous employments.

(C) The prohibition of employment is applicable to any workshop wherein any process is carried on by the occupier with the aid of his family.

(D) The Act does not prohibit but regulates employment of children in non-hazardous occupations and processes. *[June 2016]*

56. Consider the following statements under the Factories Act, 1948:

(*i*) Only a member of the Board of directors of a company can be occupier of the factory of the company.

(*ii*) The ultimate control of factory owned by a company vests in the Board of directors.

(*iii*) The ultimate control of factory owned by a company which vests in the Board of directors can be vested in anyone else.

nominate its employee as occupier of its factory.

Select the false statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[Dec. 2016]*

57. In the case of *Workmen of Delhi Electric Supply Undertaking* v. *Management of D.E.S.U.* (1973), the Supreme Court held that —

(A) The process undertaken in transforming and transmitting electricity generated at the power station falls within the definition of manufacturing process.

(B) The process undertaken in transforming and transmitting electricity generated at the power station does not fall within the definition of manufacturing process.

(C) Employment is a contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision.

(D) Employment is a contract of service between the employer and employee where under the employer agrees to serve the employee subject to his control and supervision. *[Dec. 2016]*

58. The Factories Act, 1948 —

(A) Extends to the whole of India including the State of Jammu and Kashmir.

(B) Extends to the whole of India excluding the State of Jammu and Kashmir.

(C) Has absolute application to factories belonging to the Central Government only.

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(B) Has absolute application to factories belonging to the State Governments only. *[Dec. 2016]*

59. Consider the following statements under the Factories Act, 1948:

(*i*) An electronic data processing unit installed in premises can be construed to make it a 'factory' even if no manufacturing process is being carried on in such premises.

(*ii*) A company engaged in construction of railway line is a 'factory'.

(*iii*) For computing the number of workers for the purpose of 'factory', all workers in different group and relays in a day shall be taken into account.

(*iv*) Hotels, eating places or restaurants are covered under the definition of 'factory'.

Select the false statement from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[Dec. 2016]*

60. Part-A of the Schedule to the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 does not Include —

(A) Handloom and power loom industry

(B) Plastic units and fiberglass workshops

(C) Soldering processes in electronic industries

(D) Transport of passengers, goods or mails by Railways *[Dec. 2016]*

61. Consider the following statements under the Contract Labour (Regulation and Abolition) Act, 1970:

(*i*) Under section 11 of the Act, Gazette officers to be licensing officers are appointed by the Central Government.

(*ii*) [illegible] is transferable.

(*iii*) A licence issued to a contractor may be revoked if it is found that it was obtained by misrepresentation or suppression of any material fact.

(*iv*) The aggrieved person may, within 30 days from the date on which the order is communicated to him, prefer an appeal to an Appellate Officer.

Select the correct statement from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[Dec. 2016]*

62. Which of the following statement(s) is/are false as per the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 —

(A) As per Article 24 of the Constitution of India, a child below the age of 14 years may be employed in any factory, mine or any hazardous employment.

(B) Child labour is a concrete manifestation of violations of a range of rights of children and hence, is not recognized as a serious social problem in India.

(C) Under Article 21A of the Constitution of India, the State has been entrusted with the task of providing free and compulsory education to all the children in the age group of 6-14 years.

(D) Both (A) and (B) above *[Dec. 2016]*

63. Section 96 of the Factories Act, 1948 provides that the wrongful disclosure of results of analysis done under section 91 of the Act shall be punishable with —

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up to 6 months

(B) Imprisonment which may extend up to 6 months or fine up to ₹ 10,000 or both

(C) Imprisonment which may extend up to 3 months or fine up to ₹ 10,000 or both

(D) Imprisonment which may extend up to 3 months or fine up to ₹ 5,000 or both. *[Dec. 2016]*

64. Which one of the following is not included as an essential element in the definition of 'factory' under the Factories Act, 1948 —

(A) Premises

(B) Ten or more workers on any day of the last 12 months where manufacturing process is being carried on with the aid of power.

(C) Manufacturing process which is being carried on in the premises.

(D) 'Mine' subject to the operation of the Mines Act, 1952. *[Dec. 2016]*

65. Which one of the following statement is false under the Factories Act, 1948 —

(A) If a worker does not avail any earned leave entitled to him during the calendar year, it can be carried forward to the next calendar year.

(B) Any unpaid wages due to the workers can be recovered as delayed wages under the provisions of the Employees Compensation Act, 1923.

(C) Where an adult worker has been allowed leave for not less than 4 days, wages due for the leave period should be paid in advance.

(D) 'Standard family' means a family consisting of a worker, his/her spouse and two children below the age of 14 years. *[Dec. 2016]*

66. The Contract Labour (Regulation & Abolition) Act, 1970 deals with cognizance of offence under —

(B) Section 27

(C) Section 28

(D) Section 29. *[Dec. 2016]*

67. Under the Child & Adolescent Labour (Prohibition & Regulation) Act, 1986 which of the following statements is correct —

(A) 'Child' means a person who has completed his fourteenth year of age.

(B) 'Day' means a period of twenty four hours beginning at midnight.

(C) 'Establishment' does not include a place of public amusement or entertainment.

(D) 'Workshop' means any premises wherein any manufacturing process is carried on. *[Dec. 2016]*

68. Which one of the following is not an essential ingredient for the definition of 'worker' under section 2(*l*) of the Factories Act, 1948 —

(A) There should be an 'employed person'

(B) Employment must be direct.

(C) Employment should be in any manufacturing process.

(D) Employment may be for remuneration or not. *[Dec. 2016]*

69. Which one of the following statement is true under the Contract Labour (Regulation & Abolition) Act, 1970 —

(A) The Act applies to every establishment in which forty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour.

(B) The Act does not apply to establishments in which work only of an intermittent or casual nature is performed.

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whether work performed in an establishment is of an intermittent or casual nature.

(D) A workman cannot be deemed to be employed as contract labour without the knowledge of the principal employer. *[Dec. 2016]*

70. Under the Factories Act, 1948, the definition of "Factory" does not cover:

(A) Mines

(B) Railway Running Sheds

(C) Mobile Restaurants

(D) All of the above *[June 2017]*

71. As per section 6 of the Act, any employer who fails to comply with the provisions of the Labour Laws (Simplification of procedure for Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 shall, in the case of the second or subsequent conviction, be punishable with imprisonment which may extend to:

(A) 6 months

(B) 12 months

(C) 24 months

(D) 36 months *[June 2017]*

72. The State Governments carry out the administration of the Factories Act, *inter alia*, through:

(A) Occupier of the factories

(B) District Collectors

(C) Inspecting Staff

(D) District Judges *[June 2017]*

73. Under the Factories Act, 1948, the Certifying Surgeon may grant or renew to any such young person, a certificate of fitness, in the prescribed form to work as a child, if, after examination, he is satisfied that such young person has completed his:

(A) 12th year

(B) 13th year

(D) 15th year *[June 2017]*

74. Under the Factories Act, 1948 whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof, within ..... days from the date on which such person takes overcharge.

(A) 30

(B) 21

(C) 15

(D) 7 *[June 2017]*

75. Under the Factories Act, 1948, "Manufacturing processes" include:

(A) Stitching old gunny bags and making them fit for use.

(B) Finished goods and packing thereof.

(C) Industrial Institute imparting training, producing cloth, not with a view to its sale.

(D) Preliminary packing of raw material for delivering it to the factory. *[June 2017]*

76. "Only a member of Board of Directors of the company can be occupier of the factory, of the company. The ultimate control of factory owned by company vests in Board of Directors." This was stated in the case of ..... in respect of occupier of a factory under the Factories Act, 1948.

(A) *Lal Mohmd.* v. *Indian Railway Construction Co. Ltd.*

(B) *Chitaman Rao* v. *State of M.P.*

(C) *Birdhichand Sharma* v. *First Civil Judge, Nagpur*

(D) *J.K. Industries Ltd.* v. *Chief Inspector of Factories* *[June 2017]*

77. "Employees working in canteens in industrial establishments run by managing committee are not employees of

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of occupier." This was held in the case of ..... in relation to Factories Act, 1948.

(A) *Associated Cement Co. Ltd.* v. *Sharma*

(B) *Shinde* v. *Bombay Telephones*

(C) *Harbanslal* v. *State of Karnataka*

(D) *Kanpur Suraksha Karamchari Union* v. *Union of India*

[June 2017]

78. The licence issued by the licensing officer under the Central Rules of the Contract Labour (Regulation and Abolition) Act, 1970 is valid for:

(A) 12 months

(B) 24 months

(C) 36 months

(D) 60 months *[June 2017]*

79. The licensing officers referred under Section 11 of the Contract Labour (Regulation and Abolition) Act, 1970 are the:

(A) Inspectors of factories

(B) Welfare Officers

(C) Safety Officers

(D) Gazette Officers *[June 2017]*

80. The penalty provided for violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Rules made thereunder, is the fine, or imprisonment or both in the form of:

(A) ₹5,000 or imprisonment extending to 3 months.

(B) ₹10,000 or imprisonment extending to 2 months.

(C) ₹2,000 or imprisonment extending to 3 months.

(D) ₹1,000 or imprisonment extending to 3 months. *[June 2017]*

81. What is the limitation period under Section 27 of the Contract Labour (Regulation and Abolition) Act, 1970 to make complaint before the appropriate court?

(B) 2 months

(C) 3 months

(D) 45 days *[June 2017]*

82. Under the Contract Labour (Regulation and Abolition) Act, 1970, establishments employing not less than 10 persons and not more than 40 persons are required to furnish a core Return in:

(A) Form I

(B) Form II

(C) Form III

(D) Form IV *[June 2017]*

83. Which Section of the Contract Labour (Regulation and Abolition) Act, 1970 deals with the powers of Inspectors?

(A) Section 26

(B) Section 27

(C) Section 28

(D) Section 29 *[June 2017]*

84. As per section 16 of the Contract Labour (Regulation and Abolition) Act, 1970, one or more canteens shall be provided and maintained by the contractor for the use if such contract labour employed by him is:

(A) 50 or more

(B) 100 or more

(C) 200 or more

(D) 20 or more *[June 2017]*

85. Section 26 of the Contract Labour (Regulation and Abolition) Act, 1970 provides that no Court shall take cognizance of any offence under the Act, except on a complaint made by, or with the previous sanction in writing of the:

(A) Management of the establishment

(B) Inspector

(C) Central Advisory Board

(D) State Advisory Board

[June 2017]

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86. Section 7 of the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 provides that no child shall be required or permitted to work in any establishment in a day inclusive of interval for rest in excess of:

(A) 5 hours

(B) 6 hours

(C) 7 hours

(D) 8 hours *[June 2017]*

87. Section 14 of the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986, provides that whoever employs any child or permits any child to work in contravention of the provisions of Section 3 of the Act shall be punishable with fine and/or imprisonment for a term which shall not be less than:

(A) 6 months but may extend to one year

(B) 3 months but may extend to 6 months

(C) 3 months but may extend to 9 months

(D) 3 months but may extend to one year *[June 2017]*

88. In the case of ..... it was held that "though there exists no express provision in the Contract Labour (Prohibition and Abolition) Act, 1970 for absorption of employees in establishments where contract labour system is abolished by publication of notification under Section 10(*1*) of the Act, the principal employer is under obligation to absorb the contract labour."

(A) *Air India Statutory Corporation* v. *United Labour Union*

(B) *Vegolis Private Ltd.* v. *The Workmen*

(C) *GEA* v. *Union of India*

(D) *HSEB* v. *Suresh* *[June 2017]*

89. As per section 2(*c*) of the Factories Act, 1948 'child' means a person who has not completed his:

(A) 14 years of age

(B) 15 years of age

(C) 16 years of age

(D) 18 years of age *[Dec. 2017]*

90. Section 2(*cb*) of the Factories Act, 1948 defines the term 'Hazardous Process' as specified in First Schedule of the Act. This definition also provides that the State Government by notification in the Official Gazette may amend the First Schedule by way of:

(A) Addition of any industry specified in the First Schedule.

(B) Omission of any industry specified in the First Schedule.

(C) Variation of any industry specified in the First Schedule.

(D) Addition, omission and variation of any industry specified in the First Schedule. *[Dec. 2017]*

91. Under section 82 of the Factories Act, 1948 any unpaid wages due to the workers can be recovered as delayed wages under the provisions of the:

(A) Minimum Wages Act, 1948

(B) Payment of Wages Act, 1936

(C) Industrial Disputes Act, 1947

(D) None of the above *[Dec. 2017]*

92. The State Governments carry out the administration of the Factories Act, 1948 through:

(A) Certifying surgeons

(B) Inspecting staff

(C) Safety officers

(D) All of the above *[Dec. 2017]*

93. Consider the following statements under the provisions of Factories Act, 1948:

(*i*) As per section 9 an Inspector can enter any place which is used or which he has reasons to believe, is used as a factory.

(*ii*) Section 49 imposes statutory obligation upon the occupier of the factory to appoint Welfare Officer

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ordinarily employed.

(*iii*) The minimum number of workers, required in a factory for the mandatory appointment of a Safety Officer should be more than 1000.

(*iv*) If any worker does not avail any earned leave entitled to him during the calendar year, it can be carried forward to the next calendar year subject to the maximum of 30 days for a child worker and 40 days for an adult worker.

Select the correct statements from the options given below:

(A) (*i*) and (*ii*)

(B) (*i*) and (*iv*)

(C) (*ii*) and (*iv*)

(D) (*i*) and (*iii*) *[Dec. 2017]*

94. Section 97 of the Factories Act, 1948 lays down that if any worker employed in the factory contravenes the provisions of the Act or any rules or orders made thereunder imposing any duty or liability on workers, he shall be punishable with fine which may extend to .....

(A) ₹ 500

(B) ₹ 1,000

(C) ₹ 5,000

(D) ₹ 7,500 *[Dec. 2017]*

95. In case of employment of young persons under section 69 of the Factories Act, 1948 any fee payable for Certificate of Fitness shall be paid by:

(A) the person himself

(B) the person's parents or guardian

(C) the occupier of the factory

(D) the trade union *[Dec. 2017]*

96. Under the Factories Act, 1948 which one of the following part of the judgment was given by the Supreme Court in the case of *Kanpur Suraksha Karamchari Union* v. *Union of India*.

cient number of spittoons situated at convenient places.

(B) Employees working in canteens in industrial establishment run by Managing Committee are not employees of the Managing Committee, but are employees of occupier.

(C) In every factory wherein more than 30 workers are ordinarily employed, the facility of suitable room or rooms should be provided and maintained for the use of children under the age of six years of such women.

(D) The first-aid facilities should be provided in the factories and they should be properly maintained and readily accessible during all working hours. *[Dec. 2017]*

97. If a Question arises whether work performed in an establishment, under Contract Labour (Regulation and Abolition) Act, 1970, is of intermittent or casual nature, it will be decided by:

(A) Appropriate Government

(B) Principal Employer

(C) Trade Union

(D) Contractor *[Dec. 2017]*

98. The license issued to the contractor by the Licensing Officer under section 13 of the Contract Labour (Regulation and Abolition) Act, 1970, is valid for ..... under the Central Rules.

(A) One month

(B) Three months

(C) Six months

(D) Twelve months *[Dec. 2017]*

99. Consider the following statements relating to liability of the principal employer as stated under section 20 of the Contract Labour (Regulation and Abolition) Act, 1970:

(*i*) If the prescribed amenities are not provided by the contractor

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within the prescribed time, then such amenities shall be provided by the principal employer.

(*ii*) If the prescribed amenities are not provided by the contractor than principal employer is not bound to provide such facilities.

(*iii*) If principal employer has provided the amenities it may be recovered from the contractor by deduction from any amount payabl to the contractor under the contract.

(*iv*) If principal employer has provided the amenities it may be recovered as a debt payable by the contractor.

Select the correct statement from the options given below:

(A) (*i*), (*ii*) and (*iii*)

(B) (*i*), (*iii*) and (*iv*)

(C) (*i*), (*ii*) and (*iv*)

(D) (*ii*), (*iii*) and (*iv*) *[Dec. 2017]*

100. In case of the revocation of registration of establishment under Contract Labour (Regulation and Abolition) Act, 1970 the Registering Officer shall require the approval of:

(A) Central Government

(B) State Government

(C) Appropriate Government

(D) Labour Commissioner *[Dec. 2017]*

101. Which one of the following statement is incorrect as per the provisions of the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986?

(A) The objectives of the Act are in consonance with the provisions of Articles 24 and 39 of the Constitution of India.

(B) The Act extends to whole of India.

(C) Child Labour is the violation of the right of children as given under the Constitution of India.

(D) The Act prohibits the engagement of children below the age of fourteen years in factories and regulate their conditions of work in certain other employment. *[Dec. 2017]*

102. Section 7 of the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 provides that:

(A) No child shall be permitted or required to work between 7 p.m. and 8 a.m.

(B) No child shall be required or permitted to work overtime.

(C) No child shall be required or permitted to work, in any establishment on any day on which he has already been working in another establishment.

(D) All of the above *[Dec. 2017]*

103. Section 8 of the Child Labour (Prohibition and Regulation) Act, 1986 provides that every child employed in an establishment is entitled a holiday of one whole day in each week which will be specified in a notice permanently exhibited in a conspicuous place in the establishment. Such specified day shall not be altered by the occupier more than once in .....

(A) One month

(B) Two months

(C) Three months

(D) Six months *[Dec. 2017]*

104. Under the Factories Act, 1948 which of the following is not included in the definition of 'manufacturing process':

(A) Preserving or storing any article in cold storage.

(B) Any preliminary packing of raw material for delivery into the factory.

(C) Generating, transforming, transmitting power.

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any other substance. *[June 2018]*

105. Which section of the Factories Act, 1948 deals with the 'conditions' that exempt the occupier or manager from liability in certain cases?

(A) Section 71

(B) Section 101

(C) Section 110

(D) Section 96 *[June 2018]*

106. What is the minimum number of workers required in a factory for the mandatory appointment of a safety officer?

(A) More than 600

(B) More than 1000

(C) More than 750

(D) More than 300 *[June 2018]*

107. As per the section 6 of Factories Act, 1948, who has the power to make rules on approval, licensing and registration of factories?

(A) State Government

(B) Central Government

(C) Local Body

(D) Labour Commissioner *[June 2018]*

108. Consider the following statements under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986:

(*i*) Adolescent means a person who has completed his 14th year of age.

(*ii*) Adolescent means a person who has not completed his 18th year of age.

(*iii*) Adolescent means a person who has completed his 12th year of age.

(*iv*) Adolescent means a person who has completed his 18th year of age.

Which of the above statements are correct? Choose the correct option given below:

(A) (*i*) and (*iii*)

(B) (*ii*) and (*iii*)

(C) (*i*) and (*ii*)

(D) (*iii*) and (*iv*) *[June 2018]*

109. Under Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, 'Day' means a period of 24 hours beginning at:

(A) Morning 8.00 a.m.

(B) Noon

(C) Evening 4 p.m.

(D) Midnight *[June 2018]*

110. Which one of the following statement under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 is not correct?

(A) No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.

(B) Every adolescent may be permitted to work overtime.

(C) Adolescent will not be permitted to work in any establishment on any day on which he has already been working in another establishment.

(D) The Act prohibits employment of children below 14 years in hazardous occupation. *[June 2018]*

111. Section 8 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 states that the day specified in the notice as a weekly holiday for a child shall not be altered by an occupier more than once in –

(A) 1 week

(B) 1 month

(C) 2 months

(D) 3 months *[June 2018]*

112. As per Section 2(*1*)(*i*) of the Contract Labour (Regulation and Abolition) Act,

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which one of the following is not a workman who is:

(A) employed to do skilled, semi skilled or unskilled work

(B) to do manual, supervisory work

(C) employed mainly in a managerial or administrative capacity

(D) employed to do technical or clerical work *[June 2018]*

113. Section 8 of the Contract Labour (Regulation and Abolition) Act, 1970 lays down that the registration of an establishment may be revoked. In such case the registering officer shall give an opportunity to the principal employer of the establishment to be heard. He will also obtain previous approval of the ..... in case the registration is to be revoked.

(A) Central Government

(B) State Government

(C) Commissioner of Labour

(D) Appropriate Government *[June 2018]*

114. Section 41G of the Factories Act, 1948 says about:

(A) Fencing of machineries

(B) Facing of machineries

(C) Work on near machinery in motion

(D) Workers participation in safety management *[June 2018]*

115. Which one of the following is ***not*** related to carry out the administration of Factories Act, 1948 by the State Government?

(A) Welfare Officers

(B) Safety Officers

(C) District Collectors

(D) Certifying Surgeons

116. As per Factories Act, 1948 'Adolescent' means a person who has completed his 15th year of age but has not completed his 21st year of age. This statement is:

(B) False

(C) True in respect of young person

(D) True in respect of a child

117. Which one of the following is *not* an essential element of a factory under the Factories Act, 1948?

(A) There must be premises.

(B) There must be manufacturing process being carried on at the premises.

(C) There must be ten or more workers where the manufacturing process is being carried on with the aid of power.

(D) There electronic data processing units are installed.

118. As per the Factories Act, 1948, Inspector for his district shall be:

(A) Tahsildar

(B) Labour Welfare Officer

(C) Sub-divisional Magistrate

(D) District Magistrate

119. No child shall be employed or permitted to work in any factory:

(A) For more than eight and a half hours in any day.

(B) For more than four and a half hours in any day.

(C) For more than four hours in any day.

(D) For more than six hours in any day.

120. In which of the following cases the Supreme Court of India overruled the judgment and ultimately decided that the principal employer cannot be required to order absorption of contract labour working in the concerned establishment:

(A) *Air India Statutory Corporation* v. *United Labour Union*

(B) *Steel Authority of India* v. *National Union of Water Front Workers*

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(D) *Vegolis Private Ltd.* v. *The Workmen*

121. The Contract Labour (Regulation and Abolition) Act, 1970 makes provision for appeal against orders relating to grant of registration to establishments, revocation and suspension of licence to an appellate officer. Such an appellate officer shall be nominated by:

(A) Trade Union of Contract Labour

(B) Employer of the establishment

(C) Contractor

(D) Appropriate Government

122. "No court shall take cognizance of any offence under Contract Labour (Regulation and Abolition) Act, 1970 except on a complaint made by, or with the previous sanction in writing of the Inspector." Under which of the following sections this provision has been enumerated?

(A) Section 26

(B) Section 27

(C) Section 28

(D) Section 29

123. According to the Schedule of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 the hazardous occupations or processes include:

(B) Inflammable substances or explosive

(C) Hazardous process

(D) All of the above

124. As per Schedule to the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, paper making is a:

(A) Occupation

(B) Process

(C) Both (A) and (B)

(D) None of the above

125. A person who has ultimate control over the affairs of the factory under the Factories Act, 1948 is called as:

(A) Occupier

(B) Manager

(C) Chairman

(D) Managing Director

126. Which one of the following is not welfare provision under Factories Act, 1948?

(A) Canteen

(B) Crèches

(C) Alcoholic Beverage

(D) Drinking Water

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Answers:

1.	(A)	**2.**	(A)	**3.**	(B)	**4.**	(C)	**5.**	(C)	**6.**	(A)	**7.**	(C)
8.	(A)	**9.**	(D)	**10.**	(C)	**11.**	(C)	**12.**	(B)	**13.**	(C)	**14.**	(A)
15.	(B)	**16.**	(A)	**17.**	(A)	**18.**	(B)	**19.**	(C)	**20.**	(A)	**21.**	(B)
22.	(B)	**23.**	(C)	**24.**	(B)	**25.**	(B)	**26.**	(D)	**27.**	(D)	**28.**	(B)
29.	(A)	**30.**	(A)	**31.**	(D)	**32.**	(B)	**33.**	(D)	**34.**	(C)	**35.**	(B)
36.	(D)	**37.**	(A)	**38.**	(B)	**39.**	(A)	**40.**	(D)	**41.**	(D)	**42.**	(C)
43.	(A)	**44.**	(C)	**45.**	(C)	**46.**	(B)	**47.**	(B)	**48.**	(D)	**49.**	(A)
50.	(C)	**51.**	(D)	**52.**	(C)	**53.**	(B)	**54.**	(D)	**55.**	(D)	**56.**	(C)
57.	(B)	**58.**	(A)	**59.**	(D)	**60.**	(C)	**61.**	(C)	**62.**	(B)	**63.**	(B)
64.	(D)	**65.**	(B)	**66.**	(A)	**67.**	(B)	**68.**	(B)	**69.**	(B)	**70.**	(D)

71.	(A)	72.	(C)	73.	(C)	74.	(D)	75.	(A)	76.	(D)	77.	(D)
78.	(A)	79.	(D)	80.	(D)	81.	(C)	82.	(A)	83.	(C)	84.	(B)
85.	(B)	86.	(B)	87.	(D)	88.	(A)	89.	(B)	90.	(D)	91.	(B)
92.	(D)	93.	(C)	94.	(A)	95.	(C)	96.	(B)	97.	(A)	98.	(D)
99.	(B)	100.	(C)	101.	(C)	102.	(D)	103.	(C)	104.	(B)	105.	(B)
106.	(B)	107.	(A)	108.	(C)	109.	(D)	110.	(B)	111.	(D)	112.	(C)
113.	(D)	114.	(D)	115.	(C)	116.	(B)	117.	(D)	118.	(B)	119.	(B)
120.	(B)	121.	(D)	122.	(A)	123.	(D)	124.	(B)	125.	(A)	126.	(C)

17 : LAW OF INDUSTRIAL RELATIONS

1. Under the Industrial Disputes Act, 1947 _____ means the temporary closing of a place of employment or suspension of work or the refusal by _____ to continue to employ any number of persons so employed.

(A) Lay-off; an employer

(B) Lock out; an employer

(C) Strike; Government

(D) Retrenchment; an employer

[Dec. 2014]

2. Under section 2(*oo*) of the Industrial Disputes Act, 1947 termination of the services of a workman by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but not including voluntary retirement; or superannuation; or non-renewal of contract of employment; or termination of service on the ground of continued ill-health is known as .....

(A) Settlement

(B) Retirement

(C) Suspension

(D) Retrenchment *[Dec. 2014]*

3. The preamble of the Industrial Disputes Act, 1947 states that it is an Act to make provision for the _____ and _____ of industrial disputes and for certain other purposes.

(A) Investigation; settlement

(B) Inquiry; arbitration

(C) Investigation; safety

(D) Inquiry; welfare

[Dec. 2014]

4. Under Section 3 of the Industrial Disputes Act, 1947 the appropriate Government may by general or special order require the employer to constitute in the prescribed manner _____ in industrial establishments, where _____ or more workmen are employed or have been employed on any working day in the preceding 12 months and such Committee will be comprised of the representatives of employers and workmen engaged in the establishment.

(A) An Appropriate Committee; 300

(B) An Employer's Committee; 200

(C) A Works Committee; 100

(D) A Government Committee; 500

[Dec. 2014]

5. Under of the Industrial Disputes Act, 1947 unfair labour practices on the part of employers and trade unions of employers are specified in _____

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(B) Third Schedule

(C) Fourth Schedule

(D) Fifth Schedule *[Dec. 2014]*

6. The Supreme Court carried out an in-depth study of the definition of the term 'industry' in a comprehensive manner and laid down the tests to determine whether an activity is covered by the definition of 'industry' or not. Also referred to as the triple test, it was laid down in the case of _____

(A) *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate*

(B) *Hospital Employees Union* v. *Christian Medical College*

(C) *Bangalore Water Supply and Sewerage Board* v. *A Rajappa*

(D) *Corporation of City of Nagpur* v. *Employee* *[Dec. 2014]*

7. Under the Industrial Disputes Act, 1947 which of the following matter does not fall within the jurisdiction of Industrial Tribunals _____

(A) Classification by grades

(B) Rationalization

(C) Leave with wages and holidays

(D) Illegality or otherwise of a strike or lock-out *[Dec. 2014]*

8. As per Section 22 of the Industrial Disputes Act, 1947 no person employed in a public utility service shall go on strike in breach of contract without giving to the employer a notice of strike, within _____ before striking or within fourteen days of giving such notice.

(A) Three weeks

(B) Six weeks

(C) Eight weeks

(D) Five weeks *[Dec. 2014]*

9. Under the Industrial Disputes Act, 1947 which of the following matter does not fall within the jurisdiction of Labour Courts ____

(B) The application and interpretation of standing orders

(C) Withdrawal of any customary concession or privilege

(D) The propriety or legality of an order passed by an employer under standing orders *[Dec. 2014]*

10. _____ means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers, which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and 'workmen' means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises as defined under the _____

(A) Trade dispute; Industrial Disputes Act, 1947

(B) Industrial dispute; Industrial Disputes Act, 1947

(C) Trade dispute; Trade Union Act, 1926

(D) Company dispute; Companies Act, 2013 *[Dec. 2014]*

11. Section 10A of the Industrial Employment (Standing Orders) Act, 1946 provides that where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance at the rate of _____ of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and at the rate of _____ of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(A) 50%; 90%

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(C) 50%; 75%

(D) 90%; 75% *[Dec. 2014]*

12. Under Section 13A of the Industrial Employment (Standing Orders) Act, 1946 if any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman or a trade union or other representative body of the workmen may refer the question to any one of the _____ constituted under the _____, and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette.

(A) Authority; Industrial Employment (Standing Orders) Act, 1946

(B) Tribunal; Industrial Employment (Standing Orders) Act, 1946

(C) Courts; Industrial Employment (Standing Orders) Act, 1946

(D) Labour Courts; Industrial Disputes Act, 1947 *[Dec. 2014]*

13. The text of the 'standing orders' as finally certified under Industrial Employment (Standing Orders) Act, 1946 shall be prominently posted by the employer in _____ and in the language understood by the majority of his workmen on _____ to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

(A) Hindi; special board

(B) English; black board

(C) Urdu; sizable board

(D) English; special board *[Dec. 2014]*

14. Section 10 of the Industrial Employment (Standing Orders) Act, 1946 states that standing orders finally certified under the Act shall not, except on agreement between the employer and the workmen [illegible] body of the workmen be liable to modification until the expiry of _____ from the date on which the standing orders or the last modifications thereof came into operation.

(A) Three months

(B) Six months

(C) Nine months

(D) Twelve months *[Dec. 2014]*

15. Under the Industrial Employment (Standing Orders) Act, 1946 the function of a certifying officer or the appellate authority is to adjudicate upon the _____ of the provisions of the standing orders.

(A) Fairness or reasonableness

(B) Legality

(C) Absoluteness

(D) Clarity *[Dec. 2014]*

16. As per the Industrial Employment (Standing Orders) Act, 1946 Standing Orders shall come into operation —

(A) On the expiry of 15 days from the date on which the authenticated copies are sent to employer and workers representatives.

(B) On the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives.

(C) On the expiry of 60 days from the date on which the authenticated copies are sent to employer and workers representatives.

(D) On the expiry of 6 weeks from the date on which the authenticated copies are sent to employer and workers representatives. *[June 2015]*

17. According to the Industrial Employment (Standing Orders) Act, 1946 modification of Standing Orders will not be affected until —

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date on which the Standing Orders were last modified or certified as the case may be.

(B) The expiry of 2 months from the date on which the Standing Orders were last modified or certified as the case may be.

(C) The expiry of 3 months from the date on which the Standing Orders were last modified or certified as the case may be.

(D) The expiry of 6 months from the date on which the Standing Orders were last modified or certified as the case may be. *[June 2015]*

18. Which one of the following Acts requires employers in industrial establishments formally to define conditions of employment under them —

(A) The Apprentices Act, 1961

(B) The Industrial Employment (Standing Orders) Act, 1946

(C) The Contract Labour (Regulation and Abolition) Act, 1970

(D) The Equal Remuneration Act, 1976 *[June 2015]*

19. In terms of section 10A of the Industrial Employment (Standing Orders) Act, 1946 where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance, at the rate of _____ per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension.

(A) Fifty

(B) Sixty

(C) Seventy five

(D) Ninety *[June 2015]*

20. According to the Industrial Employment (Standing Orders) Act, 1946, workman for the first 90 days when he has been suspended pending enquiry against him is —

(A) 28% of wages

(B) 50% of wages

(C) 65% of wages

(D) 75% of wages *[June 2015]*

21. Which of the following person is not included in the definition of 'workman' under the Industrial Disputes Act, 1947 —

(A) Who is employed in a supervisory capacity drawing more than ₹ 6,500 but less than ₹ 7,500 per month as wages.

(B) Who is employed in a supervisory capacity drawing more than ₹ 1,600 but less than ₹ 6,500 per month as wages.

(C) Who is employed in a supervisory capacity drawing more than ₹ 10,000 per month as wages.

(D) Who is employed in a supervisory capacity drawing less than ₹ 1,600 per month as wages. *[June 2015]*

22. Which of the following is included in the definition of 'wages' under the Industrial Disputes Act, 1947 —

(A) Any bonus

(B) Any travelling concession

(C) Any gratuity payable on the termination of the service

(D) Any commission payable on the promotion of sales or business or both *[June 2015]*

Note: *MCQ is wrongly drafted by the ICSI. For further clarification please see the hints.*

23. Any industrial dispute or any matter appearing to be connected with, or relevant to the dispute specified in the Second Schedule of the Industrial Disputes Act, 1947 the appropriate Government, by

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for adjudication to —

(A) Labour Court

(B) Court of Inquiry

(C) Industrial Tribunal

(D) National Tribunal *[June 2015]*

Note: *MCQ is wrongly drafted by the ICSI. For further clarification please see the hints.*

24. In terms of section 25N of the Industrial Disputes Act, 1947 a workman employed in any industrial establishment shall be retrenched by the employer by giving _____ notice in writing indicating the reasons for retrenchment.

(A) One month

(B) Three months

(C) Fifteen days

(D) Twenty-one days *[June 2015]*

25. In the case of *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate*, which of the following objectives of the Industrial Disputes Act, 1947 are not laid down by the Supreme Court —

(A) Promotion of measures of securing and preserving amity and good relations between the employer and workmen

(B) Investigation and settlement of industrial disputes between employers and employees

(C) Promotion of collective bargaining

(D) Promotion of lay-off and lock-outs. *[June 2015]*

26. Under the Industrial Disputes Act, 1947 which of the following matter does not fall within the jurisdiction of Labour Courts —

(A) Hours of work and rest intervals

(B) The application and interpretation of standing orders

(C) Withdrawal of any customary concession or privilege

(D) Illegality of any strike or lock-out or the validity of any order passed by an employer understanding orders. *[June 2015]*

27. Under the Industrial Disputes Act, 1947 failure, refusal or inability of an employer to give employment, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched due to breakdown of machinery is defined as —

(A) Lay-off

(B) Lock out

(C) Retrenchment

(D) Termination *[June 2015]*

28. The Supreme Court of India taking note of various previous judicial decisions and exhaustively considering the scope of 'industry', evolved a new concept of the term 'industry' in 1978 in the following case —

(A) *State of Bombay* v. *Bombay Hospital Mazdoor Sabha*

(B) *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*

(C) *D.N. Banerji* v. *P.R. Mukherji*

(D) *University of Delhi* v. *Ram Nath* *[Dec. 2015]*

29. Under section 7B of the Industrial Disputes Act, 1947 one or more 'National Tribunals' may be constituted for adjudication of industrial disputes which are of such nature that industrial establishments situated in more than one states are likely to be interested in, or affected by, such disputes. National Tribunal may be constituted by —

(A) Central Government

(B) Affected parties

(C) Appropriate government

(D) All of the above *[Dec. 2015]*

30. In which of the following cases a Division Bench of the Supreme Court held that whether the strike is legal or illegal, the employees are not entitled for wages for the period of strike —

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Estate (P.) Ltd. v. *The workmen*

(B) *Bank of India* v. *T.S. Kelawala*

(C) *Crompton Greaves Ltd.* v. *Its Workmen*

(D) All of the above *[Dec. 2015]*

31. According to the Industrial Disputes Act, 1947, no workman or employer or trade union shall commit any 'unfair labour practice'. Any person who commits any 'unfair labour practice' shall be punishable with imprisonment and fine as per provisions of —

(A) Section 25T

(B) Section 25U

(C) Section 26(*1*)

(D) Section 26(*2*) *[Dec. 2015]*

32. '*Malis*' looking after the garden attached to the bunglows provided by the employer to its officers and directors are workmen even though their work is not directly concerned with the main work or operation of the industry. This was held by the Supreme Court of India in the case of —

(A) *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar Mills Mazdoor Union*

(B) *J.K. Cotton Spinning and Weaving Mills Co. Ltd.* v. *L.A.T.*

(C) Both (A) and (B) above

(D) Neither (A) nor (B) *[Dec. 2015]*

33. Under the Industrial Disputes Act, 1947 the factors which may constitute the ground for 'lay-off' is refusal or inability to give employment due to following reasons:

(1) Shortage of coal, power, raw materials

(2) Breakdown of machinery

(3) Financial stringency.

Which of the above is incorrect —

(A) Only (*1*)

(B) Only (*2*)

(D) None of the above *[Dec. 2015]*

34. The principal objects of the Industrial Disputes Act, 1947 as analyzed by the Supreme Court of India in *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate* are:

(1) The promotion of measures for securing and preserving amity and good relations between the employer and workmen.

(2) The prevention of illegal strikes and lock-outs.

(3) The prevention of collective bargaining.

Which of the above is/are incorrect —

(A) Only (1)

(B) Only (2)

(C) Only (3)

(D) Only (1) and (2) *[Dec. 2015]*

35. 'Triple Test' and 'Dominant Nature Test' for determination of industry were propounded by the —

(A) Government of India

(B) Parliament of India

(C) Supreme Court of India

(D) All of the above *[Dec. 2015]*

36. The order making a reference under section 10(1) of the Industrial Disputes Act, 1947 is —

(A) An administrative act

(B) A judicial act

(C) A quasi-judicial act

(D) All of the above *[Dec. 2015]*

37. Following are said to be 'Certifying Officer' under section 2(*c*) of the Industrial Employment (Standing Orders) Act, 1946:

(1) Labour Inspector

(2) Labour Commissioner

(3) Regional Labour Commissioner

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(A) Only (1) and (2)

(B) Only (2) and (3)

(C) Only (1) and (3)

(D) All of the above *[Dec. 2015]*

38. Certified standing orders become part of the statutory and not contractual terms and conditions of service and are binding on both the employer and the employees. This view was expressed by the court in the matter of —

(A) *Mohan Raj* v. *Regional Provident Fund Commissioner*

(B) *Bihar State Electricity Board* v. *Their Workmen*

(C) *Derby Textiles Ltd.* v. *Karmchari and Shramik Union*

(D) All of the above *[Dec. 2015]*

39. The object of the Industrial Employment (Standing Orders) Act, 1946 is to have uniform standing orders in respect of matters enumerated in the schedule to the Act, applicable to all workers irrespective of their time of appointment. This has been observed by the Supreme Court of India in —

(A) *Raj Ratna Sethi* v. *Ashok Bhasin*

(B) *Barauni Refinery Pragatisheel Parishad* v. *Indian Oil Corporation Ltd.*

(C) *State of Uttar Pradesh* v. *Arun Kumar Singh*

(D) None of the above *[Dec. 2015]*

40. In an appeal against the order of the certifying officer under section 6 of the Industrial Employment (Standing Orders) Act, 1946, the appellate authority can —

(A) Set aside the orders of certifying officer

(B) Remand the matter to the certifying officer for fresh consideration

(C) Both (A) and (B) above

(D) Neither (A) nor (B) *[Dec. 2015]*

41. Which of the following statement is incorrect regarding certification of draft standing orders under the Industrial Employment (Standing Orders) Act, 1946 —

(A) The employee of an establishment is required to submit to the Certifying Officer, three copies of the draft standing orders proposed by him for adoption in their establishments.

(B) The draft standing orders must be in conformity with the model standing orders.

(C) Employers of industrial establishments of similar nature may submit a joint draft of standing orders.

(D) Standing orders shall be certifiable if they are otherwise in conformity with the provisions of the Act. *[June 2016]*

42. The Industrial Employment (Standing Orders) Act, 1946 extends to the whole of India and applies to every industrial establishment wherein _____ or more workmen are employed or were employed on any day during the preceding _____ months.

(A) 50; 6

(B) 75; 9

(C) 100; 12

(D) 200; 3 *[June 2016]*

43. Under the provisions of the Industrial Disputes Act, 1947 no workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out during the pendency of —

(A) Conciliation proceedings before a Board and two months after the conclusion of such proceedings.

(B) Proceeding before a Labour Court and two months after the conclusion of such proceedings.

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or National Tribunal and two months after the conclusion of such proceedings.

(D) Arbitration proceedings before an arbitrator and seven days after the conclusion of such proceedings. *[June 2016]*

Note: *MCQ is wrongly drafted by the ICSI. For further clarification please see the hints.*

44. The second schedule appended to the Industrial Disputes Act, 1947 relates to matters within the jurisdiction of the Labour Court.

Which one of the following matters is not covered in the said schedule—

(A) The illegality or otherwise of a strike or lock-out.

(B) Discharges or dismissal of workmen.

(C) The application and interpretation of standing orders.

(D) Leave with wages and holidays. *[June 2016]*

45. The term 'award' is defined in the Industrial Disputes Act, 1947 as —

(A) An interim determination of any industrial dispute by any Labour Court, Industrial Tribunal or National Industrial Tribunal.

(B) A final determination of any industrial dispute by any Labour Court, Industrial Tribunal or National Industrial Tribunal.

(C) An interim or a final determination of any industrial dispute by any Labour Court, Industrial Tribunal and not National Industrial Tribunal.

(D) An interim or a final determination of any industrial dispute by any Labour Court, Industrial Tribunal and not National Industrial Tribunal. *[June 2016]*

Disputes Act, 1947 includes —

(A) Voluntary retirement of the workman.

(B) Retirement of the workman reaching the age of superannuation as per the contract of employment.

(C) Termination by the employer of the service of a workman as a punishment inflicted by way of disciplinary action.

(D) Termination by the employer of the service of a workman for any other reason. *[June 2016]*

47. Which one of the following is true in relation to courts of inquiry under section 6 of the Industrial Disputes Act, 1947 —

(A) The court of inquiry is constituted by the State Government by notification in the Official Gazette.

(B) The court always consists of five independent persons and out of them one person is appointed as Chairman.

(C) The court enjoys power to consider and decide any matter under the provisions of this Act.

(D) The period within which the report is to be submitted is not mandatory and the report may be submitted even beyond the period of six months without affecting the legality of the inquiry. *[June 2016]*

48. Under the provisions of the Industrial Disputes Act, 1947, which of the following is not a valid reason for an employer to declare lay-off —

(A) Break-down of machinery

(B) Financial stringency

(C) Accumulation of stocks

(D) Shortage of raw materials *[June 2016]*

49. In the case of *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate*

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the following objectives of the Industrial Disputes Act, 1947:

(*i*) Promotion of measures for securing and preserving amity and good relations between the employer and workmen.

(*ii*) Investigation and settlement of industries

(*iii*) Prevention of collective bargaining

(*iv*) Relief to workmen in the matters of lay-off and retrenchment.

Select the incorrect statements from the options given below—

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[June 2016]*

50. Which one of the following activities would fall under "industry" under the Industrial Disputes Act, 1947 –

(A) Welfare activities or economic adventures undertaken by government or statutory bodies.

(B) A charitable institution that makes no profit but hires the services of employees as in any other business but the goods and services which are the output, are made available at a low or no cost to the indigent poor.

(C) Physical Research Laboratory, Ahmadabad carrying on research not for the benefit of others and not engaged in commercial activity.

(D) Posts and Telegraphs Department. *[June 2016]*

51. Under the Industrial Employment (Standing Orders) Act, 1946 the Appellate Authority has no power to set aside the order of Certifying Officer. This was held in the case of —

Ram

(B) *Barauni Refinery Pragati Sheel Parishad* v. *Indian Oil Corporation Ltd.*

(C) *Derby Textiles Ltd.* v. *Karamchari and Shramik Union*

(D) *Indian Iron and Steel Co. Ltd.* v. *Ninth Industrial Tribunal.* *[June 2016]*

52. Consider the following statements relating to 'strike' under the Industrial Disputes Act, 1947:

(*i*) Strike cannot take place only when there is cessation of work or refusal to work by the workmen acting in combination or in a concerted manner.

(*ii*) Time factor or duration of the strike is a material factor.

(*iii*) The purpose behind the cessation of work is not relevant in determining whether there is a strike or not.

(*iv*) It is enough if the cessation of work is in defiance of the employer's authority.

Select the correct statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[Dec. 2016]*

53. Which one of the following was not laid down as objective of the Industrial Disputes Act, 1947 in the case of *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate* —

(A) Promotion of measures for securing health and social security of the workers.

(B) Prevention of illegal strikes and lock-outs.

(C) Promotion of collective bargaining.

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disputes of industrial nature arising between the employers and employees. *[Dec. 2016]*

54. The Industrial Disputes Act, 1947 is the legislation for —

(A) Inquiry into the disputes between the workmen and outside persons.

(B) Settlement of disagreements between the workers employed in the industries.

(C) Investigation and settlement of all industrial disputes.

(D) Adjudication of disputes of all civil and criminal nature related with workers employed in the industries. *[Dec. 2016]*

55. Which of the following are objects of the Industrial Employment (Standing Orders) Act, 1946:

(*i*) To enforce uniformity in the conditions of service under different employers in different industrial establishments.

(*ii*) The employer, once having made the conditions of employment known to his employed workmen, cannot change them to their detriment.

(*iii*) With the express or written conditions of employment, it is open for the prospective worker to accept them and join the industrial establishment.

(*iv*) For maintaining industrial peace and continued productivity, significance of the written express conditions of employment cannot be minimized.

Select the correct answer from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) All of the above *[Dec. 2016]*

trial Disputes Act, 1947, which one of the following is not a valid reason for an employer declaring lay-off —

(A) Shortage of coal, power and raw material

(B) Accumulation of stocks

(C) Break-down of machinery

(D) Financial stringency *[Dec. 2016]*

57. A strike or lock-out may not be illegal under the provisions of the Industrial Disputes Act, 1947 if —

(A) It is declared in contravention of section 22 of the Act.

(B) It is declared in consequence of an illegal strike.

(C) It is continued in contravention of an order made under section 10(3) of the Act.

(D) It is commenced or declared in contravention of section 23 of the Act.

58. The definition of 'industry' given in the Industrial Disputes Act, 1947 indicates that —

(A) There should exist a dispute or difference.

(B) The dispute or difference should be between employer and employee or workmen and workmen or employer and workmen.

(C) The dispute or difference should be connected with the employment or non-employment or terms of employment or the conditions of labour of any person.

(D) None of the above. *[Dec. 2016]*

59. The definition of 'retrenchment' under the Industrial Disputes Act, 1947 includes —

(A) Retirement of the workman on reaching the age of superannuation if the contract of employment

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behalf.

(B) Termination of service of the workman as a result of non-renewal of the contract of employment.

(C) Termination of service of workman on the ground of continued ill-health.

(D) None of the above

60. Under the Industrial Disputes Act, 1947, the meaning of retrenchment does not include:

(A) Termination of service on the ground of continued ill-health.

(B) Retirement of the workman.

(C) Termination of service due to non-renewal of contract.

(D) All of the above *[June 2017]*

61. If any dispute arises between an employer and his employee with respect to the bonus, payable under the Payment of Bonus Act, 1965 then, such dispute shall be deemed to be:

(A) A dispute between the concerned employee and the employer.

(B) A dispute between all the employees and the employer.

(C) Industrial dispute.

(D) Bonus dispute to be settled by the appropriate Government. *[June 2017]*

62. "Justifiability of a strike is purely a question of fact. Therefore, if the strike was restored to by the workers in support of their reasonable, fair and *bona fide* demands in peaceful manner, then the strike will be justified. Where it was resorted to by using violence or acts of sabotage or of any ulterior purpose, then the strike will be unjustified." This was held in the case of ..... in respect of legality of strike under the Industrial Disputes Act, 1947.

(A) *Gujarat Steel Tubes Ltd.* v. *Gujarat Steel Tubes Majdoor Sabha*

(B) *Workmen of Dimakuchi Tea Estate* v. *Management of Dimakuchi Tea Estate*

(C) *Haripada Dey* v. *Tata Iron & Steel Co. Ltd.*

(D) *Crompton Greaves Ltd.* v. *Workmen* *[June 2017]*

63. In the case of ..... it was held that "the government employees have no fundamental right, statutory or equitable or moral to resort to strike and they cannot take the society at ransom by going on strike, even if there is justice to some extent".

(A) *T.K. Rangarajan* v. *Government of Tamil Nadu*

(B) *Express Newspapers (P) Ltd.* v. *Michael Mark*

(C) *Bank of India* v. *T.S. Kalawala*

(D) *Crompton Greaves Ltd.* v. *The Workmen* *[June 2017]*

64. As per Section 3 of Industrial Employment (Standing Orders) Act, 1946 from the date on which this Act becomes applicable, the employer of an establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment within:

(A) 2 months

(B) 3 months

(C) 6 months

(D) 9 months *[June 2017]*

65. Under the provisions of Industrial Employment (Standing Orders) Act, 1946, where there are two categories of workers, daily rated and monthly rated but the certified Standing Orders are in respect of daily rated workmen only, then which Standing Orders can be applied to monthly rated workmen?

(A) Standard Standing Order

(B) Uniform Standing Order

(C) Model Standing Order

[June 2017]

66. Section 13A of the Industrial Employment (Standing Orders) Act, 1946 provides that the question relating to application or interpretation of a Standing Order certified under this Act, can be referred by any employer or workman or a trade union or other representative body of the workmen to any:

(A) Civil Court having the jurisdiction

(B) High Court of the concerned State where the establishment is situated

(C) Labour Court constituted under the Industrial Disputes Act, 1947

(D) District Court having the jurisdiction *[June 2017]*

67. Who is a workman in reference to the provisions of Section 2(*s*) of the Industrial Disputes Act, 1947?

(A) A Police Officer

(B) General Manager

(C) Administrative Manager

(D) None of the above *[June 2017]*

68. Under the Industrial Disputes Act, 1947 which of the following constitute an industrial dispute?

(A) No formal demands have been made by the employer, but demands were raised during conciliation proceedings.

(B) Participation by the employer in the conciliation proceedings.

(C) An agitation.

(D) No demand by the workman and that demand is not complied with by the management. *[June 2017]*

69. As per Section 5 of the Industrial Employment (Standing Orders) Act, 1946, the certified standing orders upon certification, will be sent by the Certified officer to both the employer and the employees association within:

(B) 15 days

(C) 21 days

(D) 30 days *[June 2017]*

70. As per Section 31 of the Industrial Disputes Act, 1947 whoever contravenes any of the provisions of this Act or any rules made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable will fine which may extend to:

(A) One hundred rupees

(B) Two hundred rupees

(C) Three hundred rupees

(D) Five hundred rupees *[June 2017]*

71. The definition of wages under the Industrial Disputes Act, 1947 does not include:

(A) Any travelling concession

(B) Any concessional supply of food grains

(C) Any value of any house accommodation

(D) Any bonus *[June 2017]*

72. Which one of the following is *not* included in the definition of "Industrial Establishment" under Industrial Employment (Standing Order) Act, 1946?

(A) An industrial establishment defined by section 2(*11*) of the Payment of Wages Act, 1936.

(B) A factory as defined by section 2(*m*) of the Factories Act, 1948.

(C) An institution established as statutory body under an Act of Parliament.

(D) A railway as defined by section 2(*4*) of the Indian Railways Act, 1890. *[Dec. 2017]*

73. Where any workmen is suspended by the employer pending investigation or inquiry into complaints or charges or

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shall pay to such a workman the subsistence allowance for the first 90 days:

(A) 25% of the wages

(B) 50% of the wages

(C) 75% of the wages

(D) No wages to be paid *[Dec. 2017]*

74. Any employer or workman can challenge an order given by the Certifying Officer and may file an appeal before the appellate authority:

(A) Within 10 days from the date on which copies are sent to the employer and worker's representatives.

(B) Within 15 days from the date on which copies are sent to the employer and worker's representatives.

(C) Within 20 days from the date on which copies are sent to the employer and worker's representatives.

(D) Within 30 days from the date on which copies are sent to the employer and worker's representatives *[Dec. 2017]*

75. Which one of the following is a workman under Industrial Disputes Act, 1947?

(A) A temple priest

(B) A medical representative

(C) A salesman who performs clerical work

(D) A Jailor of a prison *[Dec. 2017]*

76. Out of the following which is not an industrial dispute under Industrial Disputes Act, 1947:

(A) Employer and Employer

(B) Employer and Workmen

(C) Workmen and Workmen

(D) Employer and Appropriate Government *[Dec. 2017]*

workman under the provisions of Industrial Disputes Act, 1947:

(A) Unskilled worker

(B) Skilled worker

(C) Cleaner in Air Force

(D) Supervisor less than ₹ 10,000 p.m. as wages *[Dec. 2017]*

78. Which one of the following does not amount to strike but it is a serious case of misconduct under Industrial Disputes Act, 1947?

(A) Stay-in

(B) Tool-down

(C) Pen-down

(D) Go-slow *[Dec. 2017]*

79. Which of the following is not a designated authority for investigation and settlement of industrial disputes?

(A) Works Committee

(B) Dispute Tribunal

(C) Conciliation Officer

(D) Labour Court *[Dec. 2017]*

80. Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under Industrial Disputes Act, 1947 shall be punishable with imprisonment for a term which may extend to ..... or with fine which may extend to ..... or with both.

(A) one month; fifty rupees

(B) one month; one hundred rupees

(C) three months; two hundred rupees

(D) three months; three hundred rupees *[Dec. 2017]*

81. Workers are entitled of wages for strike period only when:

(A) The strike is legal and justified

(B) The strike is legal and unjustified

(C) The strike is justified or unjustified

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(D) The strike is unjustified *[Dec. 2017]*

82. As per section 30A of the Industrial Disputes Act, 1947 any employer who closes down any undertaking without complying with the provisions of section 25FFA shall be punishable with imprisonment for a term which may extend to ..... or with fine which may extend to ..... rupees or with both.

(A) six months; five hundred

(B) six months; one thousand

(C) six months; five thousand

(D) six months; ten thousand *[Dec. 2017]*

83. Under the Industrial Employment (Standing Order) Act, 1946 the draft standing order is to be submitted within:

(A) Two years from the date on which the Act is applicable in 5 copies.

(B) One year from the date on which the Act is applicable in 5 copies.

(C) Six months from the date on which the Act becomes applicable in 5 copies.

(D) Six months from the date on which the Act is applicable in 10 copies. *[June 2018]*

84. As per Schedule of the Industrial Employment Standing Orders Act, 1946 the additional matters to be provided in standing orders may be:

(A) Age of retirement

(B) Secrecy

(C) Transfer

(D) All of the above *[June 2018]*

85. The appeal on the certified standing orders may be preferred within ..... days before the Appellate Authority.

(A) 60

(B) 30

(C) 15

(D) 90 *[June 2018]*

86. If any workman is suspended by the employer, the employer shall pay to such workman subsistence allowance at the rate of ..... of the wages which the workman was entitled to immediately preceding the date of such suspensions for the first ninety days of suspension.

(A) 75%

(B) 50%

(C) 60%

(D) 70% *[June 2018]*

87. Under which Schedule of the Industrial Disputes Act, 1947, public utility services have been listed out?

(A) 1st Schedule

(B) 2nd Schedule

(C) 3rd Schedule

(D) 4th Schedule *[June 2018]*

88. Which one of the following is not machinery for settlement of industrial disputes under the Industrial Disputes Act, 1947?

(A) Conciliation officer

(B) Board of Conciliation

(C) Collective Bargaining Process

(D) Labour Court *[June 2018]*

89. Industrial Disputes Act, 1947 has been enacted to fulfil the objectives for:

(A) Prevention of illegal strikes and lockouts

(B) Relief to workmen in the matter of lay off and retrenchment

(C) Promotion of collective bargaining

(D) All of the above *[June 2018]*

90. The Industrial Disputes Act, 1947 replaces.....

(A) Trade Disputes Act, 1929

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(B) Royal Commission on Labour, 1934

(C) Labour Management Relations Act, 1947

(D) None of the above *[June 2018]*

91. Which one of the following disputes is not related to the Industrial Disputes Act, 1947?

(A) Between employer and employer

(B) Between employer and workmen

(C) Between employer and supplier of raw material

(D) Between workmen and workmen *[June 2018]*

92. ..... means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court.

(A) Banking Company

(B) Closure

(C) Award

(D) Conciliation Proceeding *[June 2018]*

93. How many members do a Conciliation Board consists of as per the Appropriate Government under Industrial Disputes Act, 1947?

(A) Chairperson and 2 or 4 other members

(B) Chairperson and 1 or more member

(C) Chairperson and 5 or 6 other members

(D) Chairperson and 10 other members *[June 2018]*

94. A person shall not be appointed as the presiding officer of a labour court unless he has been the presiding officer under any Provincial or State Act for not less than ..... years.

(A) 2

(B) 10

(C) 5

(D) 15 *[June 2018]*

95. How many persons are to be appointed in a National Industrial Tribunal by the Central Government?

(A) 1 person

(B) 2 persons

(C) 3 persons

(D) 5 persons *[June 2018]*

96. Choose the correct option, where no workmen shall go on a strike in breach of contract and no employer of any such workmen shall declare a lockout during:

(A) The pendency of conciliation proceedings before a board and 7 days after the conclusion of such proceedings.

(B) The pendency of proceedings before Labour Court, Tribunal or National Tribunal and 2 months, after the conclusion of such proceedings.

(C) During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

(D) All of the above *[June 2018]*

97. Unfair labour practices are listed in:

(A) The Factories Act, 1948

(B) The Industrial Employment (Standing Order) Act, 1946

(C) The Industrial Disputes Act, 1947

(D) The Trade Union Act, 1926 *[June 2018]*

98. Under Industrial Disputes Act, 1947, how many days of notice is to be given to the workman by the employer in case of any changes to be made in the service conditions specified in the Fourth Schedule?

(A) 30 days

(B) 15 days

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(D) 45 days *[June 2018]*

99. Which of the following is not a designated authority for investigation and settlement of industrial disputes under Industrial Disputes Act, 1947?

(A) Works Committee

(B) Conciliation officers

(C) Labour court

(D) Dispute Tribunal *[June 2018]*

100. Draft standing orders under the Industrial Employment (Standing Orders) Act, 1946 are to be submitted within:

(A) Two years from the date on which the Act is applicable in five copies.

(B) One year from the date on which the Act is applicable in five copies.

(C) Six months from the date on which the Act is applicable in five copies.

(D) Six months from the date on which the Act is applicable in ten copies.

[Dec. 2018]

101. As per the Industrial Employment (Standing Orders) Act, 1946, the standing orders shall come into operation on the expiry of ..... days from the date on which the authenticated copies are sent to employer or workers representatives.

(A) 7

(B) 15

(C) 21

(D) 30 *[Dec. 2018]*

102. According to the provisions of the Industrial Employment (Standing Orders) Act, 1946 the court held that the appellate authority has no power to set aside an order of Certifying Officer. It can confirm or amend the Standing Orders. Which of the following case is related to this judgment?

(A) *Kerala Agro Machinery Corporation*

(B) *Khadi Gram Udyog Sangh* v. *Jit Ram*

v. *Indian Air Gases Ltd.*

(D) *Indian Express Employees Union* v. *Indian Express Ltd.*

[Dec. 2018]

103. Among the objectives of the Industrial Disputes Act, 1947, one is promotion of measures of securing and preserving amity and good relations between the employer and workmen. In which of the following cases the Supreme Court has authenticated this objective?

(A) *Hospital Employees Union* v. *Christian Medical College*

(B) *Bangalore Water Supply* v. *A. Rajappa*

(C) *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estates Ltd.*

(D) None of the above *[Dec. 2018]*

104. Under Industrial Disputes Act, 1947 unfair labour practice has been inserted in:

(A) Chapter VA

(B) Chapter V

(C) Chapter VC

(D) Chapter VD *[Dec. 2018]*

105. Which of the following type of strikes is *not* a 'Primary Strike'?

(A) Stay-in

(B) Tool-down

(C) Pen-down

(D) Go-slow *[Dec. 2018]*

106. Penalty for closure without notice without complying the provisions of section 25FFA under Industrial Disputes Act, 1947 shall be punishable with:

(A) Imprisonment for 6 months or fine up to ₹ 5,000 or with both

(B) Imprisonment for 3 months and fine up to ₹ 2,000

(C) Only fine of ₹ 5,000

(D) Only fine of ₹ 2,000 *[Dec. 2018]*

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specifies the jurisdiction of Labour Court?

(A) First Schedule

(B) Second Schedule

(C) Third Schedule

(D) Fourth Schedule *[Dec. 2018]*

108. An employer cannot declare a lock-out:

(A) Without giving fourteen days notice thereof to the workmen.

(B) Before the expiry of the notice period.

(C) During the pendency of any conciliation proceedings before a Conciliation Officer.

(D) In any of the above situation. *[Dec. 2018]*

109. When an employer fails or refuses to give employment to a workmen on account of ..... it is called lay-off.

(A) Shortage of coal or raw materials

(C) Break-down of machineries

(D) Any of the above reasons *[Dec. 2018]*

110. ..... have been setup under the provisions of the Industrial Disputes Act, 1947 for adjudication of industrial disputes in an organization.

(A) Lok-Adalat

(B) Civil Court

(C) Labour Court

(D) All of the above *[Dec. 2018]*

111. Which of the following statement is true about the Constitutional validity of section 10 of the Industrial Disputes Act, 1947?

(A) It is *ultra vires* the Constitution.

(B) It is *intra vires* the Constitution.

(C) Both (A) and (B)

(D) None of the above *[Dec. 2018]*

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Answers:

1.	(B)	**2.**	(B)	**3.**	(A)	**4.**	(C)	**5.**	(D)	**6.**	(C)	**7.**	(D)
8.	(B)	**9.**	(A)	**10.**	(B)	**11.**	(C)	**12.**	(D)	**13.**	(D)	**14.**	(B)
15.	(A)	**16.**	(B)	**17.**	(B)	**18.**	(B)	**19.**	(A)	**20.**	(B)	**21.**	(C)
22.	(**)	**23.**	(**)	**24.**	(B)	**25.**	(C)	**26.**	(B)	**27.**	(A)	**28.**	(B)
29.	(A)	**30.**	(B)	**31.**	(B)	**32.**	(B)	**33.**	(C)	**34.**	(C)	**35.**	(C)
36.	(A)	**37.**	(B)	**38.**	(C)	**39.**	(B)	**40.**	(D)	**41.**	(A)	**42.**	(C)
43.	(**)	**44.**	(D)	**45.**	(C)	**46.**	(D)	**47.**	(D)	**48.**	(B)	**49.**	(B)
50.	(A)	**51.**	(A)	**52.**	(C)	**53.**	(A)	**54.**	(C)	**55.**	(D)	**56.**	(D)
57.	(B)	**58.**	(D)	**59.**	(C)	**60.**	(D)	**61.**	(C)	**62.**	(A)	**63.**	(A)
64.	(C)	**65.**	(C)	**66.**	(C)	**67.**	(D)	**68.**	(A)	**69.**	(A)	**70.**	(A)
71.	(D)	**72.**	(C)	**73.**	(B)	**74.**	(D)	**75.**	(C)	**76.**	(D)	**77.**	(C)
78.	(D)	**79.**	(B)	**80.**	(A)	**81.**	(A)	**82.**	(C)	**83.**	(C)	**84.**	(D)
85.	(B)	**86.**	(B)	**87.**	(A)	**88.**	(C)	**89.**	(D)	**90.**	(A)	**91.**	(C)
92.	(C)	**93.**	(A)	**94.**	(C)	**95.**	(A)	**96.**	(D)	**97.**	(C)	**98.**	(C)
99.	(D)	**100.**	(C)	**101.**	(D)	**102.**	(B)	**103.**	(C)	**104.**	(B)	**105.**	(D)
106.	(A)	**107.**	(B)	**108.**	(D)	**109.**	(D)	**110.**	(C)	**111.**	(D)		

*** MCQs are wrongly drafted by ICSI; for further clarification please see the hints.*

22. Option (A) & (C) is excluded from the definition of "Wages" as given in Section 2(*rr*) of the Industrial Dispute Act, 1947. In study material of the Institute the definition is wrongly presented. Definition as given in Institutes study material excludes "any commission payable on the promotion of sales or business or both" form the definition of wages but the definition of wages is amended by the Industrial Dispute (Amendment) Act, 1982 the same is included in definition of "wages". Thus, as per question Option (B) and (D) are both correct.

23. Matter specified in Second Schedule can be referred to Labour Court or Industrial Tribunal.

Hence both option (A) & (C) is correct.

43. Both Option (B) and (C) are correct. Please refer to Section 23 of the Industrial Disputes Act, 1947.

18 : LAW OF WAGES

1. Section 13A of the Payment of Wages Act, 1936 provides that every register and record required to be maintained shall be preserved for a period of _____ after the date of last entry made therein.

(A) Five years

(B) Three years

(C) Eight years

(D) One year *[Dec. 2014]*

2. The payment of wages of certain classes of employed persons is regulated by the _____

(A) Equal Remuneration Act, 1976

(B) Minimum Wages Act, 1948

(C) Payment of Wages Act, 1936

(D) Employees Compensation Act, 1923 *[Dec. 2014]*

3. Section 5 of the Payment of Wages Act, 1936 specifies that the wages of every person employed upon or in any railway factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the _____ day. The wages of every person employed upon or in any other railway factory or industrial or other establishment shall be paid before the expiry of the _____ day, after the last day of the wage-period in respect of which the wages are payable.

(A) Seventh; seventh

(B) Fifth; seventh

(C) Seventh; tenth

(D) Eighth; tenth *[Dec. 2014]*

4. According to Section 3 of the Minimum Wages Act, 1948 the _____ may review at such intervals as it may think fit, such intervals ____ years, and revise the minimum rate of wages, if necessary.

(A) Appropriate Government; not exceeding five

(B) Central Government; exceeding five

(C) State Government; not exceeding three

(D) Local authority; exceeding three *[Dec. 2014]*

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1948 provides that where an employee is engaged in work on piece work basis for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid at —

(A) Minimum piece rate

(B) Over time rate

(C) Minimum time rate

(D) Normal rate *[Dec. 2014]*

6. As per the Minimum Wages Act, 1948 the method used to fix minimum wages in respect of scheduled employment is called _____

(A) Employment method

(B) Appropriate method

(C) Committee and notification method

(D) Wage method *[Dec. 2014]*

7. As per Section 6 of the Payment of Wages Act, 1936 all wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorization of the employed person, pay him the wages either by ..... or by crediting the wages in his .....

(A) Currency notes; post office passbook

(B) Cheque; post office passbook

(C) Draft; bank account

(D) Cheque; bank account *[Dec. 2014]*

8. The term _____ means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment; is defined under the _____

1961

(B) Same work or work of a similar nature; Equal Remuneration Act, 1976

(C) Standing work; Equal Remuneration Act, 1976

(D) Occupation; The Child Labour (Prohibition & Regulation) Act, 1986 *[Dec. 2014]*

9. According to Section 10 of the Payment of Bonus Act, 1965 every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be _____ of the salary or wage earned by the employee during the accounting year or _____, *whichever is higher*, whether or not the employer has any allocable surplus in the accounting year.

(A) 8.33%; ₹ 100

(B) 8.33%; ₹ 1,000

(C) 20%; ₹ 100

(D) 20%; ₹ 1,000 *[Dec. 2014]*

10. Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of the Payment of Bonus Act, 1965 provided he has worked in the establishment in that year for not less than _____

(A) 45 Working days

(B) 30 Working days

(C) 180 Working days

(D) 270 Working days *[Dec. 2014]*

11. Under Section 2(4) of the Payment of Bonus Act, 1965, 'Allocable Surplus' means –

(*a*) In relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act, 1961 for the declaration and payment within

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out of its profits in accordance with the provisions of section 194 of that Act, _____ of the available surplus in an accounting year;

(*b*) In any other case _____ of such available surplus.

Select correct answer from the options given below.

(A) 67%; 50%

(B) 60%; 67%

(C) 50%; 60%

(D) 67%; 60% *[Dec. 2014]*

12. The Payment of Bonus Act, 1965 applies to (*a*) every factory; and (*b*) every other establishment in which _____ persons are employed on any day during an accounting year. The appropriate Government may, by notification in the Official Gazette specify any establishment or class of establishment (including an establishment being a factory within the meaning of sub-clause (*ii*) of clause (*m*) of Section 2 of the Factories Act, 1948) employing such number of persons as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than _____

(A) Ten or more; twenty

(B) Twenty or more; ten

(C) Twenty or less than twenty; two

(D) Less than twenty; twenty *[Dec. 2014]*

13. According to section 4 of the Minimum Wages Act, 1948 any minimum rate of wages duly fixed or revised may not consist of —

(A) A basic rate of wages and a special allowance at a rate to be adjusted (*referred to as the cost of living allowance*)

(B) A basic rate of wages or without the cost of living allowance and the cash value of the concession commodities at concessional rates where so authorized.

(C) An all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(D) An all exclusive rate not allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any. *[June 2015]*

14. Who among the following fixes the minimum rate of wages for piece work, known as minimum piece rate under section 3 of the Minimum Wages Act, 1948 —

(A) Employer

(B) Contractor

(C) Labour Commissioner

(D) Appropriate Government *[June 2015]*

15. Under the Payment of Wages Act, 1936 any premises including the precincts thereof whereon twenty or more workers are working, or were working on a day of the preceding twelve months, and in any part of which a manufacturing process is being ordinarily so carried on is known as —

(A) Factory

(B) Mobile unit belonging to the armed forces

(C) Railway running shed

(D) Hotel, restaurant or eating place *[June 2015]*

16. As per the Payment of Wages Act, 1936 wage-period shall not exceed —

(A) Half a month

(B) One month

(C) Two months

(D) Three months *[June 2015]*

17. According to the Payment of Wages Act, 1936 where the employment of any

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the employer, the wages earned by him shall be paid —

(A) Before the expiry of the second working day from the day on which his employment is terminated.

(B) Before the expiry of the fifth working day from the day on which his employment is terminated.

(C) Before the expiry of the seventh working day from the day on which his employment is terminated.

(D) Before the expiry of the tenth working day from the day on which his employment is terminated. *[June 2015]*

18. As per Section 13A of the Payment of Wages Act, 1936 every register and record required to be maintained shall be preserved for a period of —

(A) Three years after the date of the last entry made therein.

(B) Five years after the date of the last entry made therein.

(C) Eight years after the date of the last entry made therein.

(D) Nine years after the date of the last entry made therein *[June 2015]*

19. As per Section 8 of the Payment of Wages Act, 1936 no fine shall be imposed on any employed person who is under the age of —

(A) Twenty one years

(B) Fifteen years

(C) Sixteen years

(D) Eighteen years *[June 2015]*

20. Which one of the following Acts prevents discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment —

(A) The Minimum Wages Act, 1948

(B) The Payment of Wages Act, 1936

(C) The Equal Remuneration Act, 1976

(D) The Maternity Benefit Act, 1961 *[June 2015]*

21. Under the Equal Remuneration Act, 1976 the basic wage or salary and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled is defined as —

(A) Wage

(B) Remuneration

(C) Salary

(D) Contract of employment *[June 2015]*

22. Under the Equal Remuneration Act, 1976 work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment is defined as —

(A) Equal work or work of a same nature

(B) Equal work or work of a similar nature

(C) Same employment or employment of a similar nature

(D) Same work or work of a similar nature *[June 2015]*

23. As per the Payment of Bonus Act, 1965 the bonus should be paid within how many months from the close of the accounting year —

(A) One month

(B) Two months

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(D) Eight months *[June 2015]*

24. Under the Payment of Bonus Act, 1965 'accounting year' in relation to a corporation means —

(A) The year commencing on the 1st day of April.

(B) The period in respect of which any profit and loss account of the company is laid before the annual general meeting, whether that period is a year or not.

(C) The year ending on the day on which the books of account of the corporation are to be closed and balanced.

(D) The year commencing on the 1st day of January. *[June 2015]*

25. The Payment of Bonus Act, 1965 applies to every factory and every other establishment in which _____ persons are employed on any day during an accounting year.

(A) Twenty or more

(B) Twenty five or more

(C) Fifty or more

(D) Hundred or more *[June 2015]*

26. The Appropriate Government is empowered under section 7 of the Equal Remuneration Act, 1976 to appoint the authorities for hearing and deciding the claims and complaints not below the rank of —

(A) Labour Commissioner

(B) Labour Officer

(C) Labour Inspector

(D) Assistant Labour Commissioner *[Dec. 2015]*

27. According to section 4 of the Minimum Wages Act, 1948, any minimum rate of wages fixed or revised may consist of the following:

(1) Basic rate of wages with or without the cost of living allowance

(2) Basic rate of wages with or without the cost of living allowance

(3) All inclusive rate allowing for the basic rate

(4) Cost of living allowance

Select the correct answer from the options given below —

(A) (1) only

(B) (1) and (2) only

(C) (1), (3) and (4) only

(D) (1), (2), (3) and (4) *[Dec. 2015]*

28. "The committee appointed under section 5 of the Minimum Wages Act, 1948 is only an advisory body and the government is, therefore, not bound to accept its recommendations." This view is taken by the Supreme Court of India in —

(A) *Edward Mills Co.* v. *State of Ajmer*

(B) *Andhra Pradesh Hotels Association* v. *Government of Andhra Pradesh*

(C) Both (A) and (B) above

(D) Neither (A) nor (B) *[Dec. 2015]*

29. Under section 18 of the Minimum Wages Act, 1948 maintenance of registers and records by the employer is —

(A) Mandatory

(B) Optional

(C) Mandatory as well as optional as the circumstances require

(D) None of the above *[Dec. 2015]*

30. As per section 2(*ib*) of the Payment of Wages Act, 1936 'employer' includes —

(A) Wife of a deceased employer

(B) Sons and daughters of a deceased employer

(C) Legal representative of a deceased employer

(D) Only (A) and (B) above *[Dec. 2015]*

31. While making recruitment for the same work or work of a similar nature, no discrimination shall be made by the

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the employment of women in such work is prohibited or restricted under any law for the time being in force. This has been provided under the Equal Remuneration Act, 1976 in —

(A) Section 4

(B) Section 5

(C) Section 8

(D) None of the above *[Dec. 2015]*

32. Under the Payment of Bonus Act, 1965, who shall be entitled for bonus to be paid by the employer in an accounting year:

(1) Every employee

(2) Every employee who has worked for not less than thirty working days in that year

(3) Even a suspended employee, whose suspension is ultimately set aside later on

Which of the above is/are correct —

(A) Only (1)

(B) (1) and (2) only

(C) (2) and (3) only

(D) (1) and (3) only *[Dec. 2015]*

33. According to the Payment of Bonus Act, 1965, 'bonus' should be paid to employees within —

(A) One month from the close of the accounting year.

(B) Three months from the close of the accounting year.

(C) Eleven months from the close of the accounting year.

(D) Eight months from the close of the accounting year. *[Dec. 2015]*

34. The provisions of 'penalty' for contravening any of the provisions of the Payment of Bonus Act, 1965 or for not complying the directions given under the Act are given under —

(B) Section 28

(C) Section 29

(D) Section 30 *[Dec. 2015]*

35. An employee, under section 9 of the Payment of Bonus Act, 1965 shall be disqualified from receiving bonus if he is dismissed from service for —

(A) Strike

(B) Riotous or violent behaviour while on the premises of the establishment

(C) Fast unto death in favour of his demand

(D) All of the above *[Dec. 2015]*

36. Consider the following statements under the Minimum Wages Act, 1948:

(*i*) The Act provides for fixation and revision of minimum wages of the workers in the scheduled employments.

(*ii*) Under this Act, both Central and State Governments are responsible for fixation and revision of minimum wages in respect of scheduled employments.

(*iii*) There is a uniformity of minimum wages within the country in spite of differences in price of essential commodities, paying capacity, productivity, local conditions, etc.

(*iv*) The Act extends to whole of India and provides for fixing minimum rate of wages in all employments.

Select the correct answer from the options given below—

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*i*) and (*iv*) *[June 2016]*

37. According to section 3(2) of the Minimum Wages Act, 1948 the appropriate

wages. Accordingly, which one of the following matter does not fall within the provisions of section 3(2) —

(A) Time work

(B) Piece work

(C) Manual work

(D) Guarantee time rate

[June 2016]

38. Under the Minimum Wages Act, 1948, the appropriate government can fix or revise minimum rates of wages by notification in the official gazette. In this regard —

(A) The minimum rates of wages can be revised with retrospective effect.

(B) The minimum rates of wages cannot be revised with retrospective effect.

(C) The minimum rates of wages can be revised with retrospective effect in consultation with representatives of scheduled employment.

(D) The minimum rates of wages can be revised with retrospective effect only when owners of scheduled employments can afford to pay. *[June 2016]*

39. Under section 20(1) of the Minimum Wages Act, 1948, which one of the following may be appointed by the appropriate government as ban authority to hear and decide cases related to payment of wages —

(A) Any Commissioner for workmen's compensation.

(B) Any officer of the Central Government exercising functions as labour Commissioner for any region.

(C) Any officer of the State Government not below the rank of Labour Commissioner.

40. As per the Minimum Wages Act, 1948, the appropriate government may review and revise the minimum rate of wages at such intervals as it may think fit, such intervals should—

(A) Not exceed one year

(B) Not exceed two year

(C) Not exceed three year

(D) Not exceed five year *[June 2016]*

41. Which statement is correct as held by the Supreme Court in the case of *Bijoy Cotton Mills* v. *State of Ajmer* (1955)—

(A) The freedom guaranteed under Article 19(1)(g) of the Constitution of India is an absolute freedom.

(B) The restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages are not unreasonable.

(C) The restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages are unreasonable.

(D) In the interest of general public the appropriate government is required to fix uniform rate of minimum wages. *[June 2016]*

42. Consider the following statements under the Equal Remuneration Act, 1976

(*i*) The executive power to enforce the provisions of the Act is available to both the governments, *i.e.* the Central Government and the State Governments.

(*ii*) The provisions of the Act are applicable to all categories of employment.

(*iii*) Under section 3, the provisions of the Act do not have overriding effect.

(*iv*) The Act prevents discrimination made in favour of scheduled castes or scheduled tribes.

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Select the correct statements from the options given below.

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*i*) and (*iv*) *[June 2016]*

43. As per Section 4 of the Payment of Wages Act, 1936, no wage period shall exceed _____ and as per section 5, the wages of every person employed upon or in any railway factory or industrial or other establishment upon or in which less than one thousand persons are employed shall be paid before the expiry of _____

(A) One month; fifth day

(B) One month; seventh day

(C) Three months; seventh day

(D) Two months; seventh day.

[June 2016]

44. Section 15 of the Payment of Wages Act, 1936 deals with claims arising out of deductions from wages or delay in payment of wages. In this relation, which one of the following statement is incorrect —

(A) Every application for such claim shall be presented within twelve months from the date on which the deduction was made or from the date on which the payment was due to be made.

(B) Such application may be admitted after the expiry of twelve months if there was sufficient cause for delay.

(C) Every claim shall be disposed of as far as practicable within a period of three months.

(D) Direction for the payment of compensation cannot be made in the case of delayed wages.

[June 2016]

45. Consider the following statements under the provisions of the Payment of Wages Act, 1936:

(*i*) The employer is responsible for the payment of wages and in case of death of the employer his legal representative is liable.

(*ii*) The wage period fixed by the employer cannot exceed one month.

(*iii*) The employer cannot pay the wages either by cheque or by crediting the wages in the bank account of the employed person.

(*iv*) Fine can be imposed on any employed person without the previous approval of the State Government.

Select the correct statements from the options given below —

(A) (*i*) and (*iii*)

(B) (*ii*) and (*iv*)

(C) (*i*) and (*ii*)

(D) (*iii*) and (*iv*) *[June 2016]*

46. Under the Payment of Wages Act, 1936, the term 'wages' include —

(A) Any travelling allowance or the value of any travelling concession.

(B) The value of any house accommodation.

(C) Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period.

(D) Any contribution paid by the employer to any pension or provident fund. *[June 2016]*

47. The provisions of the Payment of Bonus Act, 1965 do not apply to the following classes of employees —

(A) Employees employed by any insurer carrying on general insurance business.

(B) Employees employed by universities and other educational institutions.

(C) Every other establishment in

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are employed on any day during an accounting year.

(D) Both (A) and (B) above

[June 2016]

48. Which one of the following statement is incorrect regarding recovery of bonus from an employer under the Payment of Bonus Act, 1965 —

(A) An application for recovery of bonus is required to be submitted to the State Government.

(B) An application for recovery of bonus shall be made within one year from the date on which the money becomes due.

(C) After the expiry of limitation period of one year, an application for recovery of bonus may be entertained on the ground of sufficient cause.

(D) Mode of recovery of bonus under section 21 is available only if bonus sought to be recovered is under settlement or an award or an agreement. *[June 2016]*

49. Consider the following statements under the Payment of Bonus Act, 1965:

(*i*) A suspended employee subsequently reinstated with full back wages is not eligible for bonus.

(*ii*) An employee dismissed from service for any act of misconduct is eligible for bonus.

(*iii*) Statutory bonus and customary bonus operate in two fields and do not clash with each other.

(*iv*) The employer is not entitled to deduct '*puja* bonus' from the amount of bonus payable by him to the employee.

Select the incorrect statements from the options given below ----

(A) (*i*), (*ii*) and (*iii*)

(C) (*iii*), (*iv*) and (*i*)

(D) (*iv*), (*i*) and (*ii*) *[June 2016]*

50. According to section 2(*13*) of the Payment of Bonus Act, 1965, 'employee' means any person (other than an apprentice) employed on a salary or wages not exceeding _____ per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be expressed or _____

(A) ₹ 10,000; implied

(B) ₹ 15,000; tacit

(C) ₹ 18,000; implied and tacit

(D) ₹ 20,000; implied or tacit.

[June 2016]

51. Which one of the following statement is correct under the Payment of Bonus Act, 1965 —

(A) The sums deductible from gross profits do not include any amount by way of depreciation admissible under the Income-tax Act, 1961.

(B) The sums deductible from gross profits include any amount by way of development rebate for which the employer is entitled under the Income-tax Act, 1961.

(C) In calculating direct tax payable by the employer, account shall be taken of any loss incurred by the employer in respect of any previous accounting year.

(D) The available surplus in respect of any accounting year shall be the gross profit for that year before deducting the sum under section 6. *[June 2016]*

52. The authority to hear and decide claim arising out of payment of less than the minimum rates of wages under section 20 of the Minimum Wages Act, 1948 is —

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compensation

(B) Any officer of the local Government

(C) Any officer of the State Government below the rank of Labour Commissioner

(D) Employer *[June 2015]*

53. Section 15 of the Payment of Wages Act, 1936 deals with claims arising out of deductions from wages or delay in payments, *etc.* The application of such claim —

(A) Must be submitted by the aggrieved employee only.

(B) Cannot be presented by any official of the registered trade union.

(C) Shall be presented within three months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made.

(D) May be admitted by the authority after the prescribed period of limitation on being satisfied by the sufficient cause. *[Dec. 2016]*

54. Consider the following statement under the Payment of Bonus Act, 1965:

(*i*) An employer is entitled to deduct Puja bonus or any customary bonus paid to the employee, from the amount of bonus payable to him in respect of that accounting year.

(*ii*) Where an employer has paid a part of the bonus payable to an employee before the date on which such bonus becomes payable, then the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus in respect of that accounting year.

(*iii*) Where an employee is found guilty of misconduct causing financial loss to the employer deduction of such amount out of bonus payable is lawful.

options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*i*)

(D) All of the above *[Dec. 2016]*

55. Consider the following statements under the Minimum Wages Act, 1948:

(*i*) In relation to any scheduled employment, the State Government is deemed to be the appropriate government.

(*ii*) A person who engages workers through another person, like a contractor, is not deemed to be an employer.

(*iii*) 'Wages' does not include the value of any house accommodation but includes house rent allowance.

(*iv*) 'Scheduled employment' means an employment specified in the schedule under the Act.

Select the false statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[Dec. 2016]*

56. Under section 15(2) of the Payment of Wages Act, 1936 where contrary to the provisions of this Act any deduction has been made from wages of an employed person or any payment of wages has been delayed, an application may be made by to the authority to hear claims.

(A) Employed person himself

(B) Any legal practitioner authorized in writing to act on his behalf

(C) Any official of a registered trade union authorized in writing to act on his behalf

(D) All of the above *[Dec. 2016]*

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of Bonus Act, 1965, an employee shall be disqualified from receiving bonus, if he is dismissed from service for —

(A) Fraud

(B) Riotous or violent behaviour while on the premises of the establishment

(C) Theft, misappropriation or sabotage of any property of the establishment

(D) All of the above *[Dec. 2016]*

58. Minimum Wages Act, 1948 was challenged in the case of —

(A) *Unichoyi* v. *State of Kerala*

(B) *Nathu Ram Shukla* v. *State of Madhya Pradesh*

(C) *Bijoy Cotton Mills* v. *State of Ajmer*

(D) *Basti Ram* v. *State of Andhra Pradesh* *[Dec. 2016]*

59. Excluding provisions of section 22 of the Payment of Bonus Act, 1965, the bonus should be paid within a period of eight months. But on sufficient reasons the period may be extended. However, the total period so extended should not exceed —

(A) One year

(B) Two years

(C) Three years

(D) Five years *[Dec. 2016]*

60. Which one of the following statement is false under the Minimum Wages Act, 1948 —

(A) The Act provides for fixation and revision of minimum wages of workers engaged in factories and establishments.

(B) Under the Act, both Central Government as well as State Governments are responsible in respect of scheduled employments within their jurisdictions.

(C) Minimum wages, both within the country and internationally, owing to different factors.

(D) In case of any scheduled employment carried on by or under the authority of the Central Government or Railway administration, the Central Government is the appropriate government. *[Dec. 2016]*

61. Consider the following statements under the Minimum Wages Act, 1948:

(*i*) Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act.

(*ii*) Payment for overtime work cannot be claimed by the employees who are getting better wages.

(*iii*) An employee shall receive wages for full normal working day even if his failure to work is caused by his unwillingness to work.

(*iv*) The provisions of section 20(*1*) are applicable if there exists a dispute between the employer and the employee.

Select the false statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[Dec. 2016]*

62. Consider the following statements under the Payment of Wages Act, 1936:

(*i*) 'Employed person' does not include the legal representative of a deceased employed person.

(*ii*) 'Industrial or other establishment' does not include tramway service or motor transport service engaged in carrying passengers or goods.

(*iii*) 'Wages' does not include any bonus which does not form part of the

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terms of employment.

(*iv*) 'Employer' includes the legal representative of a deceased employer.

Select the false statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[Dec. 2016]*

63. To give effect to the provisions of the Constitution of India, the Parliament enacted the Equal Remuneration Act, 1976 based upon —

(A) Directive Principles of State Policy

(B) Fundamental rights

(C) Fundamental duties

(D) Preamble *[Dec. 2016]*

64. Section 3(*3*) of the Minimum Wages Act, 1948 provides that different minimum rates of wages may not be fixed for —

(A) Different scheduled employments.

(B) Same class of work in the same scheduled employments.

(C) Adults, adolescents, children and apprentices.

(D) Different localities. *[Dec. 2016]*

65. Which one of the following statement is false under the Payment of Bonus Act, 1965 —

(A) The date of commencement of accounting year, once declared by the employer, can be changed by him with previous permission of the prescribed authority in writing.

(B) 'Award' means a judgment of the court in relation to rights and obligations of the employee or employer under the provisions of the Act.

porate established by or under any Central, Provincial or State Act but does not include a company or a cooperative society.

(D) All of the above. *[Dec. 2016]*

66. Which one of the following statement is true under the Minimum Wages Act, 1948 —

(A) Under section 7, it is necessary that the Advisory Board must consist of representatives of any particular industry.

(B) Under section 9, 'independent person' means a person who is considered to be independent by the appropriate government.

(C) The Central Advisory Board consists of persons to be nominated by the Central Government and the State Governments.

(D) The Central Advisory Board is appointed for the purpose of advising the Central Government and the State Governments. *[Dec. 2016]*

67. As per section 2(*i*) of the Minimum Wages Act, 1948 which one of the following is not included in the definition of an 'employee' —

(A) A person employed for hire or reward to do any work, skilled or unskilled.

(B) An outworker to whom any articles or materials are given out by another person for cleaning and washing purposes.

(C) An employee declared to be an employee by the appropriate government.

(D) Any member of armed forces of the Union. *[Dec. 2016]*

68. As per the Payment of Bonus Act, 1965, an employee is entitled to be paid by his employer a bonus in an accounting year subject to the condition that he has

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worked for not less than ..... working days of that year.

(A) 90

(B) 30

(C) 60

(D) 120 *[June 2017]*

69. According to Section 3(*1*)(*b*) of the Minimum Wages Act, 1948 the 'Appropriate Government' may review at such intervals as it may think fit, such intervals not exceeding ..... years, and revise the minimum rate of wages, if necessary.

(A) 3

(B) 5

(C) 7

(D) 10 *[June 2017]*

70. Under the Payment of Wages Act, 1936, "wages" means all remuneration (*whether by way of salary allowances or otherwise*) expressed in terms of money or capable of being so expressed and includes:

(A) Value of any house accommodation

(B) Sum of travelling allowance

(C) Sum of termination benefit

(D) Receipt of payment under a scheme of profit sharing *[June 2017]*

71. Under the Minimum Wages Act, 1948, minimum wages are to be fixed on basis of standard normal working hours, namely:

(A) 42 hours a week

(B) 44 hours a week

(C) 46 hours a week

(D) 48 hours a week *[June 2017]*

72. Where an employee is engaged in work on piece work, wages shall be paid in terms of section 17 of the Minimum Wages Act, 1948 at:

(A) Minimum time rate

(B) Minimum piece rate

(C) Standard normal rate

(D) Maximum rate

73. To adjudicate disputes under the Employees State Insurance Act, 1948, ... has its jurisdiction.

(A) High Court

(B) District Court

(C) Employees Insurance Court

(D) Magistrate Court *[June 2017]*

74. The authorities for the purpose of hearing and deciding complaints with regard to the contravention of any provisions of the Equal Remuneration Act, 1976 shall not be below the rank of a:

(A) Welfare Officer

(B) Safety Officer

(C) Labour Officer

(D) Personnel Officer *[June 2017]*

75. Under the Minimum Wages Act, 1948 in fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow:

(A) Advisory Method

(B) Notification Method

(C) Conciliation Method

(D) Negotiation Method *[June 2017]*

76. When in an accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees then, the excess shall be, subject to a limit of ..... of the total salary or wages of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule of the Payment of Bonus Act, 1965.

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(A) 10.40%

(B) 12.50%

(C) 20.00%

(D) 25.60% *[June 2017]*

77. If there is a dispute regarding payment of bonus pending before any authority under Section 22 of the Payment of Bonus Act, 1965 all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within ..... from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.

(A) Three months

(B) Two months

(C) One month

(D) 90 days *[June 2017]*

78. Which of the following is the *correct* answer regarding inclusion of an employee for the entitlement of bonus under the Payment of Bonus Act, 1965?

(A) Any employee in any industry employed to do any unskilled work.

(B) Any part time permanent employee working on fixed hours.

(C) Any employee other than an apprentice.

(D) All of the above *[Dec. 2017]*

79. 'Establishment in Public Sector' under Payment of Bonus Act, 1965 means and includes a corporation in which not less than forty per cent of its capital is held by:

(A) The Government

(B) The Reserve Bank of India

(C) A corporation owned by the Government or the Reserve Bank of India

(D) All of the above

80. In which of the following cases the Supreme Court held that an employee suspended but subsequently reinstated with full back wages cannot be treated to be ineligible for bonus for the period of suspension under section 8 of the Payment of Bonus Act, 1965?

(A) *Project Manager Ahmedabad Project O.N.G.C.* v. *Sham Kumar Sahegal*

(B) *Pandian Roadways Corporation Ltd.* v. *Presiding Officer, Principal Labour Court*

(C) *State* v. *Sardar Singh Majithia*

(D) *H.P. State Electricity Board* v. *Ranjeet Singh* *[Dec. 2017]*

81. If any person contravenes any of the provisions of Payment of Bonus Act, 1965 or any rule made thereunder, he shall be punishable with imprisonment for a term which may extend to ..... or with fine which may extend to ..... or with both.

(A) One month; 500 rupees

(B) Two months; 500 rupees

(C) Six months; 1,000 rupees

(D) Nine months; 1,000 rupees *[Dec. 2017]*

82. Which one of the following is the *correct* part of the Constitution upon which the provisions of Equal Remuneration Act, 1976 are based?

(A) Fundamental Rights

(B) Directive Principles of State Policy

(C) Preamble

(D) Fundamental Duties *[Dec. 2017]*

83. Which one of the following will not be included in the definition of "Appropriate Government" under Minimum Wages Act, 1948?

(A) The Central Government

(B) The Municipal Administration

(C) The Railway Administration

(D) The State Governments *[Dec. 2017]*

84. Which one of the following will be included in the term 'wages' as defined

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Act, 1948?

(A) House rent allowance

(B) Contribution by the employer to any pension fund

(C) Travelling allowance

(D) Gratuity payable on discharge *[Dec. 2017]*

85. Where any employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of section 17 of the Minimum Wages Act, 1948 at:

(A) Minimum time rate

(B) Guaranteed time rate

(C) Minimum piece rate

(D) Overtime rate *[Dec. 2017]*

86. Which one of the following statement is *incorrect* as regards to Minimum Wages Act, 1948?

(A) This Act extends to whole of India except the State of Jammu and Kashmir.

(B) As per Section 11 of the Act minimum wages shall be paid in cash.

(C) In fixing minimum rates of wages in respect of any scheduled employment, the Appropriate Government can follow either of Committee Method or Notification Method.

(D) Under section 12, payment of wages less than the minimum rates of wages notified by the Appropriate Government is an offence. *[Dec. 2017]*

87. As per Section 2(*ii*) of the payment of wages Act, 1936, industrial or other establishment means any:

(A) Inland vessel mechanically propelled

(B) Plantation

(D) All of the above *[Dec. 2017]*

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

(A) 21 days

(B) 1 month

(C) 2 months

(D) 3 months *[Dec. 2017]*

89. If the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee subject to a maximum of ..... of such salary or wage.

(A) 15%

(B) 20%

(C) 25%

(D) 30% *[Dec. 2017]*

90. The minimum wages as fixed under the Minimum Wages Act, 1948 must be revised at least once in:

(A) 2 years

(B) 3 years

(C) 5 years

(D) No mention under Act *[June 2018]*

91. Under the Minimum Wages Act, 1948, which of the following cannot be appointed by the appropriate government by notification in the official gazette for deciding claims arising out of payment of less than the minimum rates of wages?

(A) Any Commissioner for Workmen's Compensation.

(B) Any officer of the Central Government exercising functions as a Labour Commissioner for any region.

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(C) Any officer of the State Government not below the rank of Labour Commissioner.

(D) Any officer not less than the rank of District Magistrate.

[June 2018]

92. What methods have been mentioned in section 5 of the Minimum Wages Act, 1948 for fixation and revision of minimum wages?

(A) Committee method

(B) Notification method

(C) Voting method

(D) Both (A) and (B) *[June 2018]*

93. Under section 8 of the Minimum Wages Act, 1948 the Central Advisory Board shall consist of the following members nominated by Central Government:

(A) The Employers

(B) The Employees

(C) Independent Persons

(D) All of the above *[June 2018]*

94. Which of the following is not included under the definition of wages given under the Payment of Wages Act, 1936?

(A) Basic Wage

(B) Dearness Allowance

(C) Incentive

(D) Gratuity *[June 2018]*

95. Under the Payment of Wages Act, 1936 the fine should not be imposed on any employee who is below the age of ..... years.

(A) 21

(B) 18

(C) 15

(D) 12 *[June 2018]*

96. Which one of the following Article of the Constitution of India is the basis upon which the Equal Remuneration Act, 1976 has been enacted by the Parliament of India?

(A) Article 45

(B) Article 40

(C) Article 49

(D) Article 39 *[June 2018]*

97. If any employer omits or fails to carry out any direction made by the Appropriate Government under Equal Remuneration Act, 1976, he/she shall be punishable with:

(A) Fine

(B) Imprisonment

(C) Both fine and imprisonment

(D) All of the above *[June 2018]*

98. Under the Equal Remuneration Act, 1976 it is the duty of every ..... to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

(A) Central Government

(B) State Government

(C) Employer

(D) Labour Commissioner *[June 2018]*

99. Which one of the following statement is not correct as regards to the objects of the Equal Remuneration Act, 1976?

(A) Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workman.

(B) Such work should be same or of a similar nature.

(C) There should not be discrimination while making recruitment for same work or work of a similar nature.

(D) Discrimination between man and woman workman may be made in any condition of services subsequent to recruitment. *[June 2018]*

100. Under the Payment of Bonus Act, 1965 the gross profits derived by an em-

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any accounting year, shall be computed:

(A) In case of Banking Company according to Schedule II and in any other case Schedule I.

(B) In case of Banking Company according to Schedule I and in any other case Schedule II.

(C) In case of Banking Company and in any other case Schedule I.

(D) In case of Banking Company and in any other case Schedule II.

[June 2018]

101. In case of contravention of the provisions of the Payment of Bonus Act, 1965 and its rules may attract the punishment of:

(A) Imprisonment upto 3 months or fine up to ₹ 500 or both.

(B) Imprisonment upto 2 months or fine up to ₹ 1,000 or both.

(C) Imprisonment upto 6 months or fine up to ₹ 5,000 or both.

(D) Imprisonment upto 6 months or fine up to ₹ 1,000 or both.

[June 2018]

102. Which one of the following statement is true as regard to the Payment of Bonus Act, 1965?

(A) An employee suspended but subsequently reinstated is entitled for full wages for period of suspension only.

(B) An employee suspended but subsequently reinstated is not entitled to bonus.

(C) An employee suspended but subsequently reinstated is entitled for full wages for suspension period as well as bonus for the said period.

(D) An employee suspended but subsequently reinstated with full back wages is not eligible for bonus for the period of suspension.

[June 2018]

capable of being expressed in terms of money, which would, if the terms of employment are express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes:

(A) Such allowances (including dearness allowance) as the workman is for the time being entitled to.

(B) The value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles.

(C) Any travelling concession.

(D) All of the above *[June 2018]*

104. Section 13A of the Payment of Wages Act, 1936 provides that every employer shall maintain such register of records giving particulars of persons employed by him. Every such register and record shall be preserved for a period of..... after the date of the last entry made therein.

(A) three years

(B) five years

(C) seven years

(D) ten years *[June 2018]*

105. As per section 5 of the Payment of Wages Act, 1936 payment of wages of establishments employing not less than 1000 employees shall be paid within ..... of the wage month.

(A) 7 days

(B) 15 days

(C) 2 days

(D) 10 days *[June 2018]*

106. An employee is eligible to get-bonus under the Payment of Bonus Act, 1965 if he had worked for not less than ..... in the preceding year.

(A) 30 days

(B) 240 days

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(D) 190 days *[June 2018]*

107. Where a worker works in a factory for more than ..... hours in any day or more than ..... hours in any week, he shall in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

(A) 9; 48

(B) 6; 36

(C) 12; 48

(D) 12; 60 *[Dec. 2018]*

108. Which of the following are the responsibilities of Central Advisory Board?

(A) Advising the Central and State Governments in the matters of the fixation of minimum rates of wages.

(B) Advising the Central and State Governments in the matters of the revision of minimum rates of wages.

(C) Coordinate the work of States Advisory Boards.

(D) All of the above *[Dec. 2018]*

109. Any employer found guilty of paying less than minimum rates of wages shall be punished with imprisonment up to ..... and/or fine which may extend up to ..... under the Minimum Wages Act, 1948.

(A) 5 years; ₹ 50,000

(B) 2 years; ₹ 2,000

(C) 6 months; ₹ 500

(D) 3 months; ₹ 50 *[Dec. 2018]*

110. As per section 2(*h*) of the Minimum Wages Act, 1948 the term 'Wages' will include:

(A) The value of the house accommodation

(B) Contribution by the employer to any pension fund

(D) None of the above *[Dec. 2018]*

111. Which one of the following will not mean an "Appropriate Government" in relation to any scheduled employment under Minimum Wages Act, 1948?

(A) The Railway Administration

(B) The Municipal Administration

(C) The State Government

(D) The Central Government *[Dec. 2018]*

112. Section 5 of the Minimum Wages Act, 1948 states that in fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages the appropriate Government can follow:

(A) Committee Method

(B) Notification Method

(C) Either Committee Method or Notification Method

(D) All of the above *[Dec. 2018]*

113. According to the provisions of the Payment of Wages Act, 1936, in railway factories or industrial or other establishments upon or in which less than one thousand persons are employed, wages shall be paid before the expiry of the:

(A) Seventh day of the month

(B) Tenth day of the month

(C) Third day of the month

(D) None of the above *[Dec. 2018]*

114. Section 8 of the Payment of Wages Act, 1936 deals with fine. It provides that no fine imposed on any employed person shall be recovered from him after the expiry of ..... days from the day on which it was imposed.

(A) 30

(B) 60

(C) 90

(D) 15 *[Dec. 2018]*

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Wages Act, 1948 the Central Government shall appoint a Central Advisory Board. The Chairman of the Board shall be appointed from:

(A) The persons nominated by Central Government representing employers only.

(B) The persons nominated by Central Government representing employees only.

(C) Either from the representatives of employers or employees.

(D) Independent person nominated by the Central Government. *[Dec. 2018]*

116. The term 'Wages' under the Payment of Wages Act, 1936 includes:

(A) Any contribution paid by the employer to any pension or provident fund.

(B) Any travelling allowance.

(C) Any remuneration payable under any award or settlement between the parties or order of a court.

(D) Any gratuity payable on the termination of employment. *[Dec. 2018]*

117. The statement "No discrimination to be made while recruiting men and women workers" has been enumerated in the:

(A) Factories Act, 1948

(B) Equal Remuneration Act, 1976

(C) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

(D) Minimum Wages Act, 1948 *[Dec. 2018]*

118. Which one of the following statement is *incorrect* relating to the Equal Remuneration Act, 1976?

(A) The provisions of the Equal Remuneration Act, 1976 have been extended to all categories of employment.

(B) The Equal Remuneration Act, 1976 extends to whole of India.

(C) It is the duty of State Government to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

(D) The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workmen. *[Dec. 2018]*

119. The principle of equal pay for equal work is contained in Article ..... of the Constitution of India.

(A) 38

(B) 40

(C) 44

(D) 39 *[Dec. 2018]*

120. In the case of..... it was held that conceptually, statutory bonus and customary bonus operate in two fields and do not clash with each other:

(A) *Hukamchand Jute Mills Ltd.* v. *Second Industrial Tribunal*

(B) *Jalan Trading Co.* v. *Mill Mazdoor Sabha*

(C) *Mumbai Kamgar Sabha* v. *Abdul Bhai*

(D) *State* v. *Sardar Singh Majithia* *[Dec. 2018]*

121. Which of the following statement is *not* correct as per the Payment of Bonus Act, 1965?

(A) It is applicable to construction industry.

(B) It does not apply to employees in Life Insurance Corporate of India.

(C) Allocable surplus means 67 per cent of the available surplus.

(D) Employee means any person including apprentice. *[Dec. 2018]*

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122. The minimum bonus which an employer is required to pay even he suffers losses during the accounting year or there is no allocable surplus is ..... of the salary or wages during the accounting year.

(A) 10 per cent

(B) 20 per cent

(C) 8.33 per cent

(D) 6.33 per cent *[Dec. 2018]*

123. Under section 8 of the Payment of Bonus Act, 1965 every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked for not less than ..... working days in that year.

(A) 30

(B) 60

(C) 90

(D) 120 *[Dec. 2018]*

124. In case, the provisions of the Payment of Bonus Act, 1965 or Rules are contravened the punishment may be inflicted of:

(A) Imprisonment upto 3 months or fine up to ₹ 500 or both.

(B) Imprisonment upto 6 months or fine up to ₹ 1,000 or both.

(C) Imprisonment upto 6 months or fine up to ₹ 2,000 or both.

(D) Imprisonment upto 2 months or fine up to ₹ 1,000 or both. *[Dec. 2018]*

Answers:

1.	(B)	2.	(A)	3.	(C)	4.	(A)	5.	(C)	6.	(C)	7.	(D)
8.	(B)	9.	(A)	10.	(B)	11.	(D)	12.	(B)	13.	(D)	14.	(D)
15.	(A)	16.	(B)	17.	(A)	18.	(A)	19.	(B)	20.	(C)	21.	(B)
22.	(D)	23.	(D)	24.	(C)	25.	(A)	26.	(B)	27.	(D)	28.	(A)
29.	(A)	30.	(C)	31.	(B)	32.	(C)	33.	(D)	34.	(B)	35.	(B)
36.	(A)	37.	(C)	38.	(A)	39.	(D)	40.	(D)	41.	(B)	42.	(A)
43.	(B)	44.	(D)	45.	(C)	46.	(C)	47.	(B)	48.	(A)	49.	(D)
50.	(A)	51.	(B)	52.	(A)	53.	(D)	54.	(D)	55.	(A)	56.	(D)
57.	(D)	58.	(C)	59.	(B)	60.	(A)	61.	(C)	62.	(A)	63.	(A)
64.	(B)	65.	(B)	66.	(D)	67.	(D)	68.	(B)	69.	(B)	70.	(D)
71.	(D)	72.	(A)	73.	(C)	74.	(C)	75.	(B)	76.	(C)	77.	(C)
78.	(D)	79.	(D)	80.	(A)	81.	(C)	82.	(B)	83.	(B)	84.	(A)
85.	(A)	86.	(A)	87.	(D)	88.	(B)	89.	(B)	90.	(C)	91.	(D)
92.	(D)	93.	(D)	94.	(D)	95.	(C)	96.	(D)	97.	(C)	98.	(C)
99.	(D)	100.	(B)	101.	(D)	102.	(C)	103.	(D)	104.	(A)	105.	(D)
106.	(A)	107.	(A)	108.	(D)	109.	(C)	110.	(D)	111.	(B)	112.	(C)
113.	(A)	114.	(C)	115.	(D)	116.	(C)	117.	(B)	118.	(C)	119.	(D)
120.	(A)	121.	(D)	122.	(C)	123.	(A)	124.	(B)				

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19 : SOCIAL SECURITY LEGISLATIONS

1. Which of the following is not a 'dependent' as per section 2(*6A*) of the Employees State Insurance Act, 1948 _____

(A) A widowed daughter-in-law

(B) A minor child of a pre-deceased son

(C) A minor child of a pre-deceased daughter where no parent of the child is alive

(D) A paternal grandparent, if parent of the insured person is alive *[Dec. 2014]*

2. The Employees' State Insurance Corporation to function efficiently has been provided with two wings namely _____

(A) Benefit Committee and Corporation Committee

(B) Corporation Committee and Medical Benefit Council

(C) Workers Committee and Standing Committee

(D) Standing Committee and Medical Benefit Council *[Dec. 2014]*

3. As per the Employees Pension Scheme, 1995 members on attaining the age of _____ and having rendered a minimum of _____ of contributory service qualify for pension from superannuation fund.

(A) Fifty-eight years; 15 years

(B) Fifty-eight years; 10 years

(C) Sixty years; 15 years

(D) Sixty years; 10 years *[Dec. 2014]*

4. Under section 29 of the Employees State Insurance Act, 1948 Employees State Insurance Corporation is empowered to:

(*i*) acquire and hold property, both movable and immovable

(*ii*) invest any money and reinvest or realize such investment

(*iii*) raise loans and discharge loans

Select the correct answer from the options given below.

(A) (*i*) only

(B) (*i*) and (*ii*) only

(C) (*ii*) and (*iii*) only

(D) (*i*), (*ii*) and (*iii*) *[Dec. 2014]*

5. The rate of employees and employers contributions in the Employees State Insurance Scheme is _____

(A) 3.25% and 0.75% respectively

(B) 0.75% and 3.75% respectively

(C) 0.75% and 3.25% respectively

(D) 3.75% and 1.25% respectively *[Dec. 2014]*

6. Under the Payment of Gratuity Act, 1972 where the services of an employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment, the gratuity payable to the employee may be _____

(A) Only partially forfeited

(B) Wholly or partially forfeited

(C) Only wholly forfeited

(D) Withheld and distributed to other employees *[Dec. 2014]*

7. As per Section 13 of the Payment of Gratuity Act, 1972 no gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section 5 of the Act, shall be liable to attachment in execution of any decree or order of any _____

(A) Civil, revenue or criminal court

(B) Civil court only

(C) Revenue court only

(D) Revenue or criminal court only *[Dec. 2014]*

8. As per the Labour Laws (Simplification of procedure for Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 employer of very small establishment is required to furnish a annual return in _____

(A) Form I

(B) Form II

(C) Form A

(D) Form B *[Dec. 2014]*

9. In terms of the Labour Laws (Simplification of procedure for Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 'small establishment' means an establishment in which not less than _____ and not more nineteen persons are employed or were employed on any day of the preceding twelve months and 'very small establishment' means an establishment in which not more than _____ persons are employed or were employed on any day of the preceding twelve months.

(A) Ten; fifteen

(B) Ten; twenty

(C) Ten; nine

(D) Twenty; nine *[Dec. 2014]*

10. _____ means any trade or occupation or any subject field in engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a _____ for the purposes of Apprentices Act, 1961.

(A) Technical trade; technical training

(B) Technical Trade; apprenticeship training

(C) Designated trade; apprenticeship training

(D) Designated trade; designated trade *[Dec. 2014]*

11. Under the Apprentices Act, 1961 any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be referred for decision to the _____

(A) Apprenticeship Director

(B) Apprenticeship Adviser

(C) Apprenticeship Committee

(D) Apprenticeship Tribunal *[Dec. 2014]*

12. As per the Apprentices Act, 1961 a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, if such person is not less than —

(A) 14 years of age and satisfies prescribed standards of education and physical fitness.

(B) 16 years of age and satisfies prescribed standards of education.

(C) 18 years of age and satisfies prescribed standards of physical fitness.

(D) 21 years of age and satisfies prescribed standards of education and physical fitness. *[Dec. 2014]*

13. Under the Apprentices Act, 1961 every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be _____ and not a worker and the provisions of any law with respect to labour shall _____ to or in relation to such apprentice.

(A) Employee of the establishment; apply

(B) Trainee; apply

(C) Trainee; not apply

(D) Employee of the establishment; not apply *[Dec. 2014]*

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Benefit Act, 1961 _____ of the provisions of this Act and the rules made there under in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

(A) A book

(B) A register

(C) An abstract

(D) A copy *[Dec. 2014]*

15. Section 11 of the Maternity Benefit Act, 1961 provides that every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work _____ break(s) of the prescribed duration for nursing the child until the child attains the age of _____

(A) One; ten months

(B) Two; fifteen months

(C) Two; twenty months

(D) Four; fifteen months *[Dec. 2014]*

16. The Maternity Benefit Act, 1961 *inter alia*, applies to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which _____ persons are employed, or were employed, on any day of the preceding _____

(A) Ten or more; twelve months

(B) Twenty or more; six months

(C) Ten or more; two years

(D) Less than ten; twelve months *[Dec. 2014]*

17. Section 6B of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 empowers the Central Government to frame a Scheme for the purpose of providing life insurance benefit to class of establishments to which the Act applies, known as the ____

(A) Employees Contribution Scheme

(B) Employees Retirement Scheme

(C) Employees Deposit-Linked Insurance Scheme

(D) Employees Pension Scheme *[Dec. 2014]*

18. Under the Payment of Gratuity Act, 1972 gratuity shall be payable to an employee on the termination of his employment if he has rendered continuous service for —

(A) Not less than three years

(B) Not less than five years

(C) Not less than seven years

(D) Not less than ten years *[June 2015]*

19. If the services of an employee have been terminated for riotous or disorderly conduct or any other act of violence on his part, the gratuity payable to him under the Payment of Gratuity Act, 1972 may —

(A) Be forfeited wholly or partially

(B) Not to be forfeited wholly or partially

(C) Be given at the discretion of employer

(D) Be referred to the trade union *[June 2015]*

20. Which Act, regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits —

(A) The Apprentices Act, 1961

(B) The Industrial Employment (Standing Orders) Act, 1946

(C) The Maternity Benefit Act, 1961

(D) The Equal Remuneration Act, 1976. *[June 2015]*

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21. The Payment of Gratuity Act, 1972 does not apply to which of the following —

(A) Every factory, mine, oilfield, plantation, port and railway company.

(B) Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

(C) Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which less than 10 persons are employed, or were employed, on any day of the preceding twelve months.

(D) Such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months as the Central Government may, by notification specify in this behalf. *[June 2015]*

22. In the event of any dispute relating to the amount of gratuity payable, the employer shall deposit such amount as he admits to be payable by him —

(A) With the Civil Court

(B) With the Revenue Court

(C) With the Labour Inspector

(D) With the Controlling Authority *[June 2015]*

23. An employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity under the Payment of Gratuity Act, 1972 at the rate of —

(A) Three days wages for each season

(B) Five days wages for each season

(C) Seven days wages for each season

(D) Ten days wages for each season *[June 2015]*

24. Which establishment is defined as 'small establishment' under the Labour Laws (Simplification of procedure for Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 —

(A) The establishment in which not less than 9 and not more than 20 persons are employed or were employed on any day in preceding 12 months.

(B) The establishment in which not less than 10 and not more 40 persons are employed or were employed on any day of the preceding 12 months.

(C) The establishment in which not more than 9 persons are employed or were employed on any day in preceding 12 months.

(D) The establishment in which not more than 10 persons are employed or were employed on any day in preceding 12 months. *[June 2015]*

25. Which of the following Act is not a Scheduled Act as specified in the First Schedule to the Labour Laws (Simplification of procedure for Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 —

(A) The Payment of Wages Act, 1936

(B) The Weekly Holidays Act, 1942

(C) The Minimum Wages Act, 1948

(D) The Employees State Insurance Act, 1948. *[June 2015]*

26. As per Sections 3A and 3B of the Apprentices Act, 1961 in every designated trade, training places shall not be reserved for —

(A) Scheduled castes

(B) Scheduled tribes

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(D) Minority community *[June 2015]*

27. Under the Apprentices Act, 1961 any industry or business in which any trade, occupation or subject field in engineering or technology or any vocational course may be specified as a designated trade is defined as —

(A) Industry

(B) Business

(C) Trade

(D) Designated trade *[June 2015]*

28. Who is eligible to become an apprentice under the Apprentices Act, 1961 —

(A) Any person who is of 14 years or above, fulfils the basic physical and educational standards as defined in the Apprentices Act, 1961.

(B) Any person who is of 16 years or above, fulfils the basic physical or educational standards as defined in the Apprentices Act, 1961.

(C) Any person who is of 18 years or above, fulfils the basic physical and educational standards as defined in the Apprentices Act, 1961.

(D) Any person who is of 21 years or above fulfils the basic physical and educational standards as defined in the Apprentices Act, 1961. *[June 2015]*

29. Under the Maternity Benefit Act, 1961 employment of or work by a woman is prohibited during —

(A) Three weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy

(B) Six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy

(C) Nine weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy

(D) Twelve weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. *[June 2015]*

30. The insurance benefit under the Employees Deposit-Linked Insurance Scheme, 1976 has increased by _____ in addition to the existing admissible benefits *w.e.f.* 1st September, 2014.

(A) 20%

(B) 25%

(C) 50%

(D) 70% *[June 2015]*

31. Excluded employee under the Employees Provident Funds Scheme, 1952 means an employee drawing pay exceeding —

(A) ₹ 6,500 per month

(B) ₹ 15,000 per month

(C) ₹ 10,000 per month

(D) ₹ 20,000 per month *[June 2015]*

32. As per Section 2(*ll*) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 superannuation in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of —

(A) Fifty-eight years

(B) Fifty-five years

(C) Sixty years

(D) Sixty-two years *[June 2015]*

33. The statutory wage ceiling under the Employees Deposit-Linked Insurance Scheme, 1976 is —

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(A) ₹ 8,500 per month

(B) ₹ 10,000 per month

(C) ₹ 15,000 per month

(D) ₹ 25,000 per month *[June 2015]*

34. An insured person under the Employees State Insurance Act, 1948 is entitled to receive certain benefits. But the insured person is —

(A) Not entitled to receive more than one benefit for the same period.

(B) Entitled to receive more than one benefit for the same period on compassionate grounds.

(C) Entitled to receive one benefit partly in cash and receive the other benefit in kind for the same period.

(D) Entitled to receive more than one benefit on approval of authorities concerned. *[June 2015]*

35. The employer's contribution rate in every wage period under the Employees State Insurance Act, 1948 is —

(A) 4.25% of the wages paid/payable

(B) 0.75% of the wages paid/payable

(C) 3.75% of the wages paid/payable

(D) 3.25% of the wages paid/payable *[June 2015]*

36. Which of the following benefit is not covered under the Employees State Insurance Act, 1948 —

(A) Sickness benefit

(B) Maternity benefit

(C) Disablement benefit

(D) Recreational benefit *[June 2015]*

37. A factory which is engaged in any process of blending, packing or repacking of tea or coffee for a period not exceeding seven months in a year under section 2(*19A*) of the Employees State Insurance Act, 1948 is known as —

(A) Seasonal factory

(B) Non-seasonal factory

(C) Manufacturing process

(D) Scheduled employment *[June 2015]*

38. As per the Maternity Benefit Act, 1961 a woman is entitled to maternity benefit if she has actually worked in an establishment of the employer for a period of not less than —

(A) Eighty days in the twelve months immediately preceding the date of her expected delivery

(B) Ninety days in the twelve months immediately preceding the date of her expected delivery

(C) Hundred days in the twelve months immediately preceding the date of her expected delivery

(D) Hundred twenty days in the twelve months immediately preceding the date of her expected delivery. *[June 2015]*

39. Under section 13 of the Payment of Gratuity Act, 1972, 'Gratuity' is exempted from attachment in execution of any decree or order of any:

(1) Civil Court

(2) Revenue Court

(3) Criminal Court

Which of the above is incorrect?

(A) Only (1)

(B) Only (2)

(C) Only (3)

(D) None of the above *[Dec. 2015]*

40. Gratuity is payable to an employee engaged in factories, mines, oil fields, *etc.*, if he has rendered continuous service for not less than five years on his —

(A) Superannuation

(B) Retirement

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(D) All of the above *[Dec. 2015]*

41. Which of the following is a 'Scheduled Act' as per First Schedule of the Labour Laws (Simplification of procedure for Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 —

(A) The Trade Unions Act, 1926

(B) The Payment of Bonus Act, 1965

(C) The Factories Act, 1948

(D) The Maternity Benefit Act, 1961 *[Dec. 2015]*

42. Under the Apprentices Act, 1961 an 'apprentice' is a person who is —

(A) Learner and is undergoing apprenticeship training in pursuance of a contract of apprenticeship

(B) An employee

(C) Both (A) and (B) above

(D) Neither (A) nor (B) *[Dec. 2015]*

43. Under the Apprentices Act, 1961 every trade apprentice undergoing apprenticeship training shall have:

(1) To attend practical and instructional classes regularly.

(2) To carry out all lawful orders of his employer and superiors in the establishment.

(3) To carry out his obligations under the contract of apprenticeship.

Which of the above is/are correct —

(A) Only (1) and (2)

(B) Only (2) and (3)

(C) Only (1) and (3)

(D) (1), (2) and (3) *[Dec. 2015]*

44. According to Section 3 of the Apprentices Act, 1961, a person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade if such person:

(2) Satisfies prescribed standard or education.

(3) Satisfies prescribed physical fitness.

Which of the above is/are correct —

(A) Only (1) and (2)

(B) Only (2) and (3)

(C) Only (1) and (3)

(D) All of the above *[Dec. 2015]*

45. Under section 5(3) of the Maternity Benefit Act, 1961 the maximum period for which any woman employee shall be entitled to maternity benefit is —

(A) Six weeks

(B) Eight weeks

(C) Twelve weeks

(D) Twenty four weeks *[Dec. 2015]*

46. According to section 3(*h*) of the Maternity Benefit Act, 1961, 'maternity benefit' means the payment referred under —

(A) Section 5(*1*)

(B) Section 5(*2*)

(C) Section 5(*3*)

(D) None of the above *[Dec. 2015]*

47. The provision imposing obligation on the employer for not reducing wages of any employee either directly or indirectly to whom the scheme or insurance scheme applies is given in the Employees Provident Funds and Miscellaneous Provisions Act, 1952 under —

(A) Section 10

(B) Section 11

(C) Section 12

(D) Section 13 *[Dec. 2015]*

48. Under section 74 of the Employees State Insurance Act, 1948, who is empowered to constitute an Employees Insurance Court —

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(B) State Government

(C) Appropriate Government

(D) All of the above *[Dec. 2015]*

49. The Employees State Insurance Act, 1948 provides for certain benefits to the employees in case of:

(1) Sickness

(2) Maternity

(3) Employment injury

Which of the above is/are correct —

(A) (1) and (3) only

(B) (2) and (3) only

(C) (1) only

(D) (1), (2) and (3) *[Dec. 2015]*

50. The Employees State Insurance Corporation shall be a body corporate under section 3 of the Employees State Insurance Act, 1948. The other main feature(s) of the Employees State Insurance Corporation is/are —

(A) It shall have perpetual succession.

(B) It shall have an uncommon seal.

(C) It can sue but cannot be sued in its own name.

(D) All of the above *[Dec. 2015]*

51. Which of the following is covered by the 1st category of dependent under the Employees State Insurance Act, 1948 —

(A) A widow

(B) A legitimate as well as illegitimate son who has not attained the age of twenty five years

(C) An unmarried legitimate as well as illegitimate or adopted daughter

(D) None of the above *[Dec. 2015]*

52. For an employee to be insured under the Employees State Insurance Act, 1948, it is mandatory that:

(1) He must be employed in a factory or establishment to which this Act applies

(2) Employee is liable to pay contribution towards 'insurance fund' through the employer

(3) Employer is not liable to pay any sum of amount in 'insurance fund'

Which of the above statement is incorrect?

(A) Only (1)

(B) Only (2)

(C) Only (3)

(D) None of the above *[Dec. 2015]*

53. According to the Payment of Gratuity Act, 1972, gratuity shall be payable to an 'employee'—

(A) On his superannuation after completion of continuous service for not less than 5 years.

(B) On his retirement or resignation after completion of continuous service for not less than 5 years.

(C) On his becoming disabled due to accident even though unable to complete 5 years of continuous service.

(D) All of the above. *[June 2016]*

54. Which one of the following statement is true under the Payment of Gratuity Act, 1972 —

(A) Gratuity is payable only to the employee himself.

(B) The maximum amount of gratuity allowed under the Act is ₹ 3.5 lakh.

(C) An employee is not required to make nomination.

(D) An employer has the right of forfeiture of gratuity, but the right of forfeiture of gratuity is limited to the extent of damage. *[June 2016]*

55. Under the Payment of Gratuity Act, 1972, 'gratuity'—

(A) Is payable only in case of death of an employee.

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the rate of thirty days wages on the rate of wages last drawn by the employee for every completed year of service.

(C) Is a lump sum payment made by the employer as a mark of recognition of the service rendered by the employee when he retires or leaves service.

(D) Is payable only to those employees who are engaged in factories and mines. *[June 2016]*

56. Consider the following statements under the Payment of Gratuity Act, 1972:

(*i*) In a seasonal establishment, an employee shall be deemed to be in continuous service if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation.

(*ii*) Service is not continuous in case of legal termination of service and subsequent re-employment.

(*iii*) In a seasonal establishment, an employee shall be deemed to be in continuous service if he has actually worked for one hundred and ninety days.

(*iv*) Service is deemed to be continuous in case of legal termination of service and subsequent re-employment.

Select the incorrect statement from the options given below.

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[June 2016]*

57. The Labour Laws (Simplification of procedure for Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 —

(A) Provides for the exemption of establishments.

(B) Is applicable to establishments in which not less than fifteen and not more than twenty persons are employed.

(C) Provides for the exemption of employers of small establishments in relation to their tax liability.

(D) Is applicable to establishments in which not less than ten not more than forty persons are employed. *[June 2016]*

58. Which one of the following statement is incorrect under the Apprentices Act, 1961 —

(A) The stipend is to be given to an apprentice at the rate specified by the appropriate government.

(B) Any disagreement of dispute between an employer and an apprentice arising out of the apprenticeship contract is referred to Apprenticeship Council.

(C) The National Council is not an authority under Apprentices Act, 1961.

(D) An offence cannot be committed by a company under the Apprentices Act, 1961. *[June 2016]*

59. Which one of the following is not an obligation of apprentices under the Apprentices Act, 1961 —

(A) To qualify himself as a skilled craftsman before the expiry of the period of training.

(B) To attend practical and instructional classes regularly.

(C) To carry out all orders of his employer.

(D) To carry out his obligations under the contract of apprenticeship. *[June 2016]*

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of the Apprentices Act, 1961, any person aggrieved by the decision of the Apprenticeship Advisor may, within _____ from the date of communication to him of such decision, prefer an appeal against the decision to the Apprenticeship Council.

(A) 15 Days

(B) 30 Days

(C) 60 Days

(D) 90 Days *[June 2016]*

61. Under the provision of the Maternity Benefit Act, 1961 no woman shall work in any establishment during —

(A) Six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(B) Eight weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(C) Nine weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(D) Three weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. *[June 2016]*

62. Consider the following statements under the Maternity Benefit Act, 1961:

(*i*) The object of this legislation does not correspond with the provisions contained in Article 42 of the Constitution of India.

(*ii*) Women employees are also entitled to six weeks maternity benefit in case of miscarriage.

(*iii*) A woman entitled to maternity benefit is also entitled to receive from her employer medical bonus.

(*iv*) The Act does not make provisions to safeguard the interest of pregnant women workers.

given below—

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[June 2016]*

63. In relation to section 1(3) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Rajasthan High Court held in the case of *Bikaner Cold Storage Co. Ltd.* v. *Regional Provident Fund Commissioner, Rajasthan* (1979) that —

(A) All types of workmen should be included for the purpose of ascertaining the strength of workmen.

(B) Persons employed in the normal course of the business of the establishment should not be considered as the persons employed for the purpose of this provision.

(C) Persons employed for a short duration or on account of urgent necessity which is not a regular feature of the business cannot be considered as employees.

(D) Casual workers are covered under this provision. *[June 2016]*

64. The Employees Deposit-Linked Insurance Scheme, 1976 is applicable to —

(A) All factories/establishments to which the Employees Provident Funds and Miscellaneous Provisions Act, 1952 applies.

(B) All the employees who are members of the provident fund in exempted establishment are covered under the scheme.

(C) All the employees who are members of the provident fund in unexampled establishment are covered under the scheme.

(D) All of the above *[June 2016]*

65. Under section 2 of the Employees Provident Funds & Miscellaneous Provisions Act, 1952, '*basic wages*' includes —

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ployee while on duty and which are paid or payable in cash to him.

(B) The cash value of any food concession.

(C) Any dearness allowance

(D) Any presents made by the employer. *[June 2016]*

66. Section 1 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 states that —

(A) The State Government can extend the provisions of this Act to any establishment.

(B) The provisions of this Act cannot be applied to cooperative societies.

(C) Once an establishment falls within the purview of this Act, it shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

(D) Where an establishment to which this Act applied was divided among the partners, the Act would not apply to the part of each *ex-partner* if the number of persons employed in each part is less than twenty. *[June 2016]*

67. Which authority has been constituted by the Central Government to preside over the cases regarding determination of monies due from the employers —

(A) Employees Provident Funds Appellate Tribunal.

(B) Employees Provident Fund Consultancy Tribunal.

(C) Employees Provident Fund Help Desk.

(D) Employees Provident Fund Information Center. *[June 2016]*

68. Which one of the following statement is incorrect within the meaning Insurance Act, 1948 —

(A) Person who is directly employed on any work by the principal employer of the factory

(B) Person employed in zonal offices and branch offices of the factory

(C) Person whose services are temporarily let on hire to the principal employer

(D) Person who is a member in the Ordnance Depot. *[June 2016]*

69. Under the Employees State Insurance Act, 1948 to determine whether an injury is 'employment injury' or not, the basic test to be applied is that —

(A) Injury was sustained by a person within the premises or the concern where a person works.

(B) There was visible injury in the form of some wound.

(C) Injury sustained was not caused by negligence.

(D) There is a nexus between the circumstances of the accident and the employment. *[June 2016]*

70. Which of the following relations of an insured person will be included in the 'Family' under section 2 *(11)* of the Employees State Insurance Act, 1948 —

(A) Spouse

(B) A minor legitimate child

(C) An adopted child dependent upon the insured person

(D) All of the above *[June 2016]*

71. Under section 2*(3)* of the Employees State Insurance Act, 1948 the term 'confinement' means —

(A) Confinement of employees within the premises of the establishment during specified period.

(B) Confinement of manufacturing process within the premises of the establishment.

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(C) Labour resulting in commitment on account of injury during the course of employment.

(D) Labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of child. *[June 2016]*

72. Which one of the following is not a qualification to be a judge of the Employees Insurance Court —

(A) Judicial officer with minimum of five years standing

(B) Legal practitioner with minimum of five years standing

(C) Judicial officer as well as legal practitioner with minimum of five years Standing

(D) Special legal officer with minimum of five years standing *[June 2016]*

73. Under section 2 of the Employees State Insurance Act, 1948 'permanent partial disablement' means —

(A) Such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.

(B) A condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds.

(C) Disablement of a permanent nature, as reduced the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.

(D) A condition resulting from an employment injury which requires medical treatment and renders an employee as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury. *[June 2016]*

74. Under section 38 of the Employees State Insurance Act, 1948, consider the following statements:

(*i*) Insurance of all employees in factories or establishments, to which this Act applies, is compulsory.

(*ii*) Exempted employees are not liable to pay employees contribution.

(*iii*) It is moral obligation of the employer to pay his own contribution.

(*iv*) Any dispute, in this relation, shall be settled by the court of Chief Judicial Magistrate.

Select the incorrect statement from the options given below—

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[June 2016]*

75. Which one of the following statement is incorrect as per provisions of the Employees State Insurance Act, 1948 —

(A) It is the first major legislation on social security in independent India.

(B) The Employees State Insurance Corporation established by the State Governments is the premier social security organization.

(C) Employees State Insurance Fund has been created which is held and administered by the Employees State Insurance Corporation.

(D) The Act guarantees reasonably good medical care to workers and their immediate dependents. *[June 2016]*

76. The Employees Provident Funds and Miscellaneous Provisions Act, 1952 —

(A) Is enacted by the Parliament of

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nomic legislation.

(B) Provides for the establishment of Deposit Linked Insurance Fund and Employees' insurance Court.

(C) Aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress.

(D) Is administered by the State Governments through the Employees' Provident Fund Organization. *[Dec. 2016]*

77. Which one of the following cases is not related to 'employment injury' under the Employees' State Insurance Act, 1948 —

(A) *Regional Director, E.S.I Corpn.* v. *L. Ranga Rao*

(B) *E.S.I. Corpn., Indore* v. *Babulal*

(C) *Shyam Devi* v. *E.S.I.C.*

(D) *Royal Talkies, Hyderabad* v. *E.S.I.C.*

78. Consider the following statements under the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988:

(*i*) 'Employer' means the person who employs the workmen and includes the person designated as manager.

(*ii*) 'Small establishment' means an establishment in which not less than forty and not more than 100 persons are employed.

(*iii*) 'Very small establishment' means an establishment in which not more than nine persons are employed.

(*iv*) 'Establishment' includes an industrial or other establishment as defined in section 2 of the Payment of Wages Act, 1936.

Select the false statements from the options given below —

(A) (*i*) and (*iii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[Dec. 2016]*

79. Consider the following statement under the Apprentices Act, 1961:

(*i*) A minor cannot be engaged as an apprentice.

(*ii*) The employer cannot engage apprentices from other States.

(*iii*) The State Government has power to prescribe the number of apprentices to be engaged by the employer.

(*iv*) To make suitable arrangements for imparting a course of practical training to the apprentice is a moral duty of the employer.

Select the correct statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) None of the above *[Dec. 2016]*

80. The Employees State Insurance Act, 1948 —

(A) Was enacted for the benefit of the employers.

(B) Has been amended by the Employees' State Insurance (Amendment) Act, 2010 for enhancing the social security coverage and better services to the beneficiaries.

(C) Applies to all factories including seasonal factories.

(D) Has been extended by many State Governments to shops and hotels employing 10 or more persons. *[Dec. 2016]*

81. Section 4 of the Maternity Benefit Act, 1961 provides that no employer shall knowingly employ a woman in any

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establishment for a period of _____ immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(A) Six weeks

(B) Nine weeks

(C) Three months

(D) Six months *[Dec. 2016]*

82. Under section 2 of the Apprentices Act, 1961, the term 'apprentice' means —

(A) A person who is a diploma holder and eligible for apprenticeship.

(B) A person who is engineering graduate and eligible for apprenticeship.

(C) A person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

(D) A person who is given training to learn the manufacturing process in the factory. *[Dec. 2016]*

83. Gratuity payable under the Payment of Gratuity Act, 1972 is exempted from attachment in execution of any decree or order of —

(A) Civil court

(B) Revenue court

(C) Criminal court

(D) All of the above *[Dec. 2016]*

84. Under section 46 of the Employees State Insurance Act, 1948, the insured persons and their dependents are entitled to the following benefits at prescribed rate —

(A) Periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy or confinement.

(B) Perpetual periodical payments to dependents of the insured person.

(C) Payment of funeral expenses on the death of insured person.

(D) Both (A) and (C) above

[Dec. 2016]

85. Which one of the following statement is false relating to the Employees Insurance Court under section 74 of the Employees State Insurance Act, 1948 —

(A) The Employees Insurance Court is constituted by the State Government.

(B) The Court consists of such number of Judges as the Central Government gives directions to the State Government.

(C) A person who is or has been a Judicial Officer or a legal practitioner of 5 years standing is qualified to be a Judge of the Employees Insurance Court.

(D) No Civil Court has power to decide the matters falling within the jurisdiction of the Employees Insurance Court. *[Dec. 2016]*

86. The Maternity Benefit Act, 1961 —

(A) Regulates the employment of workers in factories, mines and other establishments.

(B) Is applicable to women employees and makes provisions to safeguard the interest of pregnant women workers.

(C) Is welfare legislation and hence discloses the objectives of Directive Principles of State Policy enshrined in the Constitution.

(D) Both (B) and (C) above

[Dec. 2016]

87. Very small establishment as defined under section 2(*f*) of the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988, means an establishment in which number of persons employed or were employed on any day of the preceding 12 months are not more than —

(A) 8 Persons

(B) 9 Persons

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(D) 20 Persons *[Dec. 2016]*

88. As per section 1(3) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, the provisions of this Act are applicable to —

(A) Establishments registered under the Cooperative Societies Act, 1912.

(B) Establishments registered under any law for the time being in force in any State relating to cooperative societies, employing less than 50 persons and working without the aid of power.

(C) Every establishment which is a factory engaged is any industry specified in Schedule-I and employing 20 or more persons.

(D) Establishment set-up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension. *[Dec. 2016]*

89. Which one of the following statements is false under the Payment of Gratuity Act, 1972 —

(A) Application of this Act to an employed person depends on two factors. Firstly, he should be employed in an establishment to which the Act applies and; secondly, he should be an employee as defined in the Act.

(B) This Act applies to every shop or establishment in which twenty or more persons are employed.

(C) Every employee is eligible for gratuity irrespective of his wage level.

(D) 'Employee' includes teachers in educational institutions. *[Dec. 2016]*

90. Regarding Employees Deposit-Linked Insurance Scheme under the Employees Provident Funds and Miscellaneous Provisions Act, 1952:

(*i*) The Employees Deposit-Linked Insurance Scheme, 1976 is applicable to all factories/establishments.

(*ii*) The employees are not required to contribute to the insurance fund.

(*iii*) The nomination made by a member under the employees provident fund scheme is treated as nomination under this scheme.

(*iv*) No factory or establishment can be granted exemption from this scheme.

Select the correct statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*) *[Dec. 2016]*

91. Which one of the following statement is true under the Payment of Gratuity Act, 1972 —

(A) Where an establishment has branches in more than one State, the appropriate government in such a case is the Central Government.

(B) Where a factory belongs to or is under the control of the Central Government the appropriate government in such a case is the State Government within whose territorial limits the factory is situated.

(C) A service is deemed to be continuous, in case of legal termination of service and subsequent re-employment.

(D) The number of days on which an employee has actually worked

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clude the days in case of a female on maternity leave. *[Dec. 2016]*

92. Which one of the following statement is true in relation to 'family' under the Employees State Insurance Act, 1948 —

(A) An unmarried daughter who is wholly dependent on the earnings of the insured person is deemed to be in family up to the age of twenty one years.

(B) A child who is infirm by reason of any physical or mental abnormality and wholly dependent on the earnings of the insured person, is deemed to be in family up to the age of eighteen years.

(C) Dependent parents whose income from all sources does not exceed such income as may be prescribed by the Central Government are deemed to be in family.

(D) All of the above *[Dec. 2016]*

93. Under the Maternity Benefit Act, 1961, every woman delivered of a child who returns to duty after such delivery shall be allowed —

(A) Interval for rest as available to other workers.

(B) Two breaks of prescribed duration for nursing the child.

(C) In addition to interval for rest, two breaks of prescribed duration for nursing the child.

(D) To take rest as and when she desires for nursing the child. *[Dec. 2016]*

94. The Employees State Insurance Act, 1948 lays down certain provisions to administer the affairs and general superintendence and control of the Employees State Insurance Corporation through an executive body known as the —

(A) Standing committee

(B) Medical benefit council

(C) Regional board

(D) None of the above *[Dec. 2016]*

95. According to section 2(9) of the Employees State Insurance Act, 1948, 'employee' means any person employed for wages in connection with the work of a factory or establishment and —

(A) Who is employed by or through an immediate employer under the supervision of the principal employer.

(B) Whose services are temporarily lent or let on hire to the principal employer.

(C) Any person so employed whose wages exceed such wages as may be prescribed by the Central Government.

(D) Both (A) and (B) above *[Dec. 2016]*

96. Which of the following will not be treated as 'excluded employee' under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 —

(A) An employee being member of the fund has withdrawn full amount of his accumulation in the fund.

(B) An employee, being a member, whose pay exceeds fifteen thousand rupees per month.

(C) An apprentice.

(D) An employee working in factory and drawing pay not exceeding rupees fifteen thousand per month. *[Dec. 2016]*

97. As per Section 11 of the Maternity Benefit Act, 1961, every woman delivered of a child who returns to duty after such delivery, shall be allowed in the course of her daily work, breaks of the prescribed duration for nursing the child until the child attains the age of —

(A) Nine months

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(C) Twelve months

(D) Fifteen months *[Dec. 2016]*

98. Under the provisions of Apprentices Act, 1961, any person aggrieved by the decision of the Apprenticeship Adviser may prefer an appeal against the decision to the Apprenticeship Council from the date of communication to him of such decision within .....

(A) 30 days

(B) 45 days

(C) 60 days

(D) 90 days *[June 2017]*

99. As per section 6 of the Act, any employer who fails to comply with the provisions of the Labour Laws (Simplification of procedure for Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 shall, in the case of the second or subsequent conviction, be punishable with fine of:

(A) Not less than ₹ 5,000

(B) Not less than ₹ 10,000

(C) Not less than ₹ 15,000

(D) Not less than ₹ 20,000 *[June 2017]*

100. As per section 20 of the Apprentices Act, 1961 any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship for decision shall be referred to the:

(A) Inspector of Factories

(B) Regional Commissioner

(C) Apprenticeship Council

(D) Apprenticeship Adviser *[June 2017]*

101. "Superannuation", in relation to an employee, who is the member of the Pension Scheme under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, means the attainment, by the said employee, of the age of:

(B) 58 years

(C) 60 years

(D) 65 years *[June 2017]*

102. The Employees Provident Funds and Miscellaneous Provisions Act, 1952 is applicable to factories and other classes of establishments engaged in specific industries employing:

(A) 10 or more persons

(B) 20 or more persons

(C) 50 or more persons

(D) 100 or more persons *[June 2017]*

103. The definition of employee in the Employees Provident Funds and Miscellaneous Provisions Act, 1952 includes:

(A) Part-time employee

(B) Full-time employee

(C) Employment through contract

(D) All of the above *[June 2017]*

104. The present rate of contribution of insurance amount by employer under the Employees State Insurance Act, 1948 shall be ..... of the worker's wages.

(A) 3.15%

(B) 3.50%

(C) 3.25%

(D) 3.75% *[June 2017]*

105. As per Section 7(3A) of the Payment of the Gratuity Act, 1972 if the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) due to the fault of the employer, then the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of:

(A) 10% per annum

(B) 15% per annum

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(D) 18% per annum *[June 2017]*

106. The explanation of the term 'Pay' under the Employees Provident Fund Scheme, includes cash value of:

(A) Fuel bills concession

(B) Food concession

(C) Entertainment allowance

(D) Monthly Journal subsidy *[June 2017]*

107. Under the Payment of Gratuity Act, 1972, Gratuity can be withheld by an employer, if:

(A) The land of the employer is not vacated by the employee.

(B) The gratuity is assigned by the employee.

(C) The employee is terminated for riotous conduct.

(D) All of the above *[June 2017]*

108. Under the Payment of Gratuity Act, 1972, a nominee of an employee who is eligible for payment of gratuity in the case of death of the employee shall apply to the employer ordinarily within ..... days from the date of the gratuity becomes payable to him.

(A) 30

(B) 60

(C) 90

(D) 45 *[June 2017]*

109. As per Section 7(3) of the Payment of the Gratuity Act, 1972 the employer shall arrange to pay the amount of gratuity within ..... days from the date of its becoming payable to the person to whom it is payable.

(A) 15

(B) 20

(C) 30

(D) 45 *[June 2017]*

does not cover for persons employed in:

(A) Railway company

(B) Oilfields

(C) Mines

(D) State Government *[June 2017]*

111. Section 4 of the Maternity Benefit Act, 1961, provides that no employer shall knowingly employ a woman in any establishment during the ..... immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(A) Four weeks

(B) Six weeks

(C) Eight weeks

(D) Five weeks *[June 2017]*

112. As per the provisions of the Maternity Benefit Act, 1961, a woman shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than ..... in the twelve months immediately preceding the date of her expected delivery.

(A) 60 days

(B) 70 days

(C) 80 days

(D) 90 days *[June 2017]*

113. Section 21 of the Maternity Benefit Act, 1961, provides that if any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with fine and/or imprisonment which shall not be less than:

(A) 3 months but may extend to 6 months

(B) 3 months but may extend to one year

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9 months

(D) 6 months but may extend to one year *[June 2017]*

114. Apprentice, as defined under section 2(*aa*) of the Apprentices Act, 1961 means:

(A) A person who is undergoing the training of male nurse.

(B) A person who is learning the technical work under an expert technician.

(C) A person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

(D) A person who is doing articleship/ working with a firm of Company Secretary. *[Dec. 2017]*

115. Which one of the following statement is incorrect under the Apprentices Act, 1961?

(A) An apprentice to undergo apprenticeship training in a designated trade should enter into a contract of apprenticeship with the employer.

(B) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been made.

(C) The terms and conditions involved in the contract of apprenticeship should not be inconsistent with the provisions of this Act.

(D) An Apprenticeship Adviser shall register the contract of apprenticeship within sixty days from the date of its receipt *[Dec. 2017]*

116. Every apprentice undergoing apprenticeship training in a designated trade in an establishment under Apprentices Act, 1961 shall be:

(A) A part time worker

(B) A full time worker

(D) A trainee *[Dec. 2017]*

117. No apprentice shall be required to allow to work overtime except with the approval of the ..... who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest.

(A) Employer

(B) Apprenticeship Adviser

(C) Supervisor of the Trade

(D) Manager *[Dec. 2017]*

118. Small establishment as defined under section 2(*e*) of the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988, means an establishment in which number of persons employed or were employed on any day of the preceding twelve months is:

(A) Not less than eight and not more than twenty persons.

(B) Not less than nine and not more than twenty persons.

(C) Not less than ten and not more than forty persons.

(D) Not less than twenty and not more than fifty persons. *[Dec. 2017]*

119. Which one of the following Acts have been specified in First Schedule under section 2(*d*) of the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988?

(A) Payment of Wages Act, 1936

(B) Factories Act, 1948

(C) Payment of Bonus Act, 1965

(D) All of the above *[Dec. 2017]*

120. The Employees Provident Funds and Miscellaneous Provisions Act, 1952, a social welfare legislation for employees working in factories and other establishments, provides for the institution of:

(B) Pension Fund and Deposit Linked Insurance Fund.

(C) Provident Fund and Deposit Linked Insurance Fund

(D) Provident Fund, Pension Fund and Deposit Linked Insurance Fund *[Dec. 2017]*

121. The contribution which shall be paid by the employer to the Employees Provident Fund under Employees Provident Funds and Miscellaneous Provisions Act, 1952 shall be:

(A) 8% of the basic wages

(B) 10% of the basic wages

(C) 12% of the basic wages

(D) 13% of the basic wages *[Dec. 2017]*

122. The authorized officer under Employees Provident Funds and Miscellaneous Provisions Act, 1952 shall issue a certificate for recovery of amount due from the employer to the Recovery Officer. For effecting recovery, the Recovery Officer has got the powers:

(A) To attach the property of the employer.

(B) To sell the property of the employer.

(C) Employer may be called for arrest and detention.

(D) All of the above *[Dec. 2017]*

123. Section 17 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 authorizes the Appropriate Government to grant exemption to certain establishments or persons from the operation of all or any of the provisions of the scheme, such exemption may be granted:

(A) By notification in the Official Gazette.

(B) By the appropriate authority.

(D) By notification in the Official Gazette subject to such conditions as may be specified therein. *[Dec. 2017]*

124. Which one of the following is the *correct* answer regarding the schemes signifying the social security benefits on workers and their dependants under the Employees Provident Funds and Miscellaneous Provisions Act, 1952?

(A) The Employees Provident Fund Scheme, 1952

(B) The Employees Pension Scheme, 1995

(C) The Employees Deposit-Linked Insurance Scheme, 1976

(D) All of the above *[Dec. 2017]*

125. Which one of the following will not be included in the definition of "employee" under Employees Provident Funds and Miscellaneous Provisions Act, 1952?

(A) A part time employee

(B) A night watchman

(C) Working partners drawing salaries or other allowances

(D) A sweeper working twice or thrice in a week *[Dec. 2017]*

126. As per Section 11 of the Maternity Benefit Act, 1961 every woman delivered a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her delivery work two breaks of the prescribed duration for nursing the child until the child attains the age of:

(A) 6 months

(B) 9 months

(C) 12 months

(D) 15 months *[Dec. 2017]*

127. Under section 25 of the Employees State Insurance Act, 1948. Employees State Insurance Corporation is empow-

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with powers and functions. Which of the following are such authorities?

(A) Regional Boards

(B) Local Committees

(C) Regional and Local Medical Benefit Councils

(D) All of the above *[Dec. 2017]*

128. Which one of the following is the false, statement under the provisions of Employees State Insurance Act, 1948?

(A) Under section 46 of the Employees State Insurance Act, 1948, the insured person and their dependants are entitled to medical treatment.

(B) No Civil Court has power to decide the matter falling within the purview of Employees Insurance Court.

(C) An insured person is entitled to receive all the benefits for the same period at a time.

(D) This act ensures and protects the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement *etc.* *[Dec. 2017]*

129. Which one of the following has been covered under the definition of employee by the Payment of Gratuity (Amendment) Act, 2009, retrospectively with effect from 3rd April, 1997?

(A) Employees engaged in mines

(B) Teachers in educational institutions

(C) Employees engaged in ports

(D) Employees engaged in factories *[Dec. 2017]*

130. Which one of the following emoluments is included in the definition of 'wages' under the Payment of Gratuity Act, 1972?

(A) Dearness Allowance

(B) Overtime Wages

(D) Bonus paid in cash *[Dec. 2017]*

131. In case of dispute relating to admissibility of claim of gratuity under Payment of Gratuity Act, 1972 the employer shall issue a notice specifying reasons that why the claim for gratuity is not considered admissible to the:

(A) Applicant employee

(B) Nominee of the employee

(C) Legal heir of the employee

(D) All of the above *[Dec. 2017]*

132. Which one of the following statement is true under the Payment of Gratuity Act, 1972?

(A) Where the service of an employee has been terminated for riotous and disorderly conduct owing to wilful omission or negligence, the gratuity will not be forfeited.

(B) The important functionaries in the operation of the Payment of gratuity are the Controlling Authority and Appellate Authority.

(C) In case of the death of the employee the gratuity will not be paid to his nominee.

(D) The provisions of the Gratuity Act, 1972 shall extend to the whole of India except the State of Jammu and Kashmir. *[Dec. 2017]*

133. Which one of the following statement is false under the Payment of Gratuity Act, 1972?

(A) The minimum number of employees required in an establishment for it to come under the purview of the Payment of Gratuity Act is 10.

(B) When the large establishments have branches in more than one state in such case the Appropriate Government is the Central Government.

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(C) Retirement means termination of the services of an employee otherwise than on superannuation.

(D) In case of the payment of gratuity the completion of continuous service of five years is necessary where the termination of the employment of any employee is due to death or disablement *[Dec. 2017]*

134. Consider the following statements under the Maternity Benefit Act, 1961:

(*i*) The object of this legislation correspond with the provisions contained in Article 39(*e*) & (*f*) of the Constitution of India.

(*ii*) Every employer shall prepare and maintain such register, records and muster-rolls in prescribed manner under the Act.

(*iii*) Section 5 of this Act is not related to the right of payment of the maternity benefit.

(*iv*) Employer shall not knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

Select the correct statements from the options given below:

(A) (*i*) and (*iii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*i*) and (*ii*) *[Dec. 2017]*

135. Employee's share of contribution under the Employees State Insurance Act, 1948 is:

(A) 0.50 per cent

(B) 0.25 per cent

(C) 0.75 per cent

(D) 3.25 per cent *[June 2018]*

136. Which of the following allowances earned by an employee does not fall within the definition of 'Basic Wages' under Employees Provident Fund and Misc. Provisions Act, 1952?

(A) All the emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him.

(B) The cash value of any food concession.

(C) Any dearness allowance, house-rent allowance, overtime allowance, bonus, commission or other similar allowance payable to the employee in respect of his employment or of work done in such employment.

(D) Any presents made by the employer *[June 2018]*

137. The provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 are applicable to employees who are drawing pay not exceeding:

(A) ₹ 6,000 per month

(B) ₹ 6,500 per month

(C) ₹ 15,000 per month

(D) ₹ 12,000 per month *[June 2018]*

138. Except in case of death or disablement due to accident or disease of an employee the eligibility condition for obtaining gratuity under section 4(*1*) of the Payment of Gratuity Act, 1972 is:

(A) Completion of 2 years of continuous service in continuity.

(B) Completion of 3 years of continuous service in continuity.

(C) Completion of 4 years of continuous service in continuity.

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uous service in continuity.
[June 2018]

139. Which section of Payment of Gratuity Act, 1972 deals with the determination of the amount of 'Gratuity'?

(A) Section 10

(B) Section 8

(C) Section 7

(D) Section 9 *[June 2018]*

140. Under the Payment of Gratuity Act, 1972 the maximum gratuity payable is:

(A) ₹ 20 lakh

(B) ₹ 10 lakh

(C) ₹ 25 lakh

(D) ₹ 15 lakh *[June 2018]*

141. Under the Payment of Gratuity Act, 1972 the employer shall arrange to pay the amount of gratuity within ..... days from the date it becomes payable.

(A) 30

(B) 15

(C) 60

(D) 75 *[June 2018]*

142. Payment of Gratuity Act, 1972 is applicable to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State, in which ..... persons are or were employed on any day in the preceding 12 months.

(A) 10 or more

(B) 10

(C) 20 or more

(D) 20 *[June 2018]*

143. As per the provisions of the Maternity Benefit Act, 1961 a woman shall be entitled to maternity benefit if she has actually worked in the establishment for a period not less than ..... in the twelve months immediately preceding the date of her expected delivery.

(B) 120 days

(C) 180 days

(D) 270 days *[June 2018]*

144. Under the Maternity Benefit Act, 1961 till what age of the child a mother get 2 nursing breaks in the course of her daily work?

(A) 12 months

(B) 6 months

(C) 18 months

(D) 15 months *[June 2018]*

145. The object of Maternity Benefit Act, 1961 is:

(A) To regulate the employment of women workers in such establishment for certain period before and after child birth.

(B) The application of the Act in every establishment being a factory, mine or plantation.

(C) To provide satisfactory conditions to expectant women.

(D) All of the above *[June 2018]*

146. Under the Maternity Benefit Act, 1961, for how many weeks a woman is entitled for leave in case of a miscarriage?

(A) 3 weeks

(B) 9 weeks

(C) 2 weeks

(D) 6 weeks *[June 2018]*

147. Consider the following functionaries which are important in the enforcement of the Payment of Gratuity Act, 1972:

(*i*) Controlling Authority

(*ii*) Appellate Authority

(*iii*) Concessional Authority

(*iv*) Adjunct Authority

Select the correct statement from the option given below:

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(B) (*i*), (*ii*) and (*iii*) only

(C) (*i*), (*ii*), (*iii*) and (*iv*)

(D) (*i*) and (*ii*) only *[June 2018]*

148. As per section 2(*e*) of the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 'small establishment' means an establishment in which not less than ..... and not more than ..... persons are employed or were employed on any day of preceding twelve months.

(A) 10; 20

(B) 15; 30

(C) 10; 40

(D) 10; 50 *[June 2018]*

149. Every apprentice undergoing apprenticeship training in an establishment is designated as:

(A) Part time worker

(B) Full time worker

(C) Trainee

(D) Contractual worker *[June 2018]*

150. As per section 20 of the Apprentices Act, 1961 any disagreement or dispute between an employer and on apprentice arising out of the contract of apprenticeship shall be referred for its decision to:

(A) National Council

(B) Central Apprenticeship Council

(C) Regional Boards

(D) Apprenticeship Advisor *[June 2018]*

151. Chitra Fabrics Ltd., established in Tamil Nadu, is running a canteen managed by a Managing Committee in which a contractor thereof brings the workers to work in the canteen. The workers will be employees of .....

(A) Contractor

(B) Managing Committee

(D) Occupier *[Dec. 2018]*

152. The wage limit for employees to be covered under the Employees State Insurance Act, 1948 is:

(A) ₹ 11,000 per month

(B) ₹ 18,000 per month

(C) ₹ 21,000 per month

(D) ₹ 16,000 per month *[Dec. 2018]*

153. The age of dependent daughter, who is infirm, for obtaining dependent's benefit under Employees State Insurance Act, 1948 has been extended from 18 years to:

(A) 20 years

(B) 22 years

(C) 24 years

(D) 25 years *[Dec. 2018]*

154. According to section 39(5) of the Employees State Insurance Act, 1948, if any contribution payable is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of:

(A) 9 per cent per annum

(B) 12 per cent per annum

(C) 15 per cent per annum

(D) 6 per cent per annum *[Dec. 2018]*

155. The power to decide the matters, relating to Employees State Insurance Act, 1948, falling within the jurisdiction shall be decided by:

(A) Civil Court

(B) Employees Insurance Court

(C) Small Causes Court

(D) Standing Committee *[Dec. 2018]*

156. The Employees Provident Funds & Miscellaneous Provisions Act, 1952 is applicable to every establishment which is a factory engaged in any industry specified

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persons are employed.

(A) 5 or more persons

(B) 10 or more persons

(C) 15 or more persons

(D) 20 or more persons *[Dec. 2018]*

157. The Chairman and members of Central Board constituted under Employees Provident Funds and Miscellaneous Provisions Act, 1952 are appointed by:

(A) Central Government

(B) State Government

(C) Supreme Court

(D) None of the above *[Dec. 2018]*

158. According to the provisions of Section 6 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, the Government has raised the rate of the contribution to the fund which shall be:

(A) 5 per cent

(B) 7 per cent

(C) 12 per cent

(D) 10 per cent *[Dec. 2018]*

159. Which one of the following schemes has not been framed under the Employees Provident Funds and Miscellaneous Provisions Act, 1952?

(A) The Employees Provident Fund Scheme, 1952

(B) The Employees Pension Scheme, 1995

(C) The Employees State Insurance Scheme, 1948

(D) The Employees Deposit-Linked Insurance Scheme, 1976 *[Dec. 2018]*

160. According to the provisions of the Payment Gratuity Act, 1972 if the unpaid amount of the gratuity has not been paid by the employer within the prescribed time then on issuing a certificate of the unpaid gratuity amount shall be recovered by:

(A) Controlling Authority

(B) Appellate Authority

(C) Civil Court

(D) Collector *[Dec. 2018]*

161. Payment of Gratuity Act, 1972 is applicable to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State in which ..... persons are or were employed on any day in the preceding 12 months.

(A) 10 or more

(B) 2 or more

(C) 5 or more

(D) 7 or more *[Dec. 2018]*

162. Which of the following Articles of the Constitution of India states that the State shall make provisions for securing just and human conditions of work and maternity relief?

(A) Article 40

(B) Article 41

(C) Article 42

(D) Article 43 *[Dec. 2018]*

163. Every establishment, under the provisions of Maternity Benefit Act, 1961, having ..... employees shall have the facility of crèche. The employer shall allow ..... visits a day to the crèche by the woman, which shall also include the interval for rest allowed to her.

(A) Fifty or more; two

(B) Hundred or more; one

(C) Two hundred or more; four

(D) Fifty or more; four *[Dec. 2018]*

164. The term apprenticeship training under Apprentices Act, 1961 is defined under:

(A) Section 2(*aa*)

(B) Section 2(*b*)

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(C) Section 2(*a*)

(D) Section 2(*aaa*) *[Dec. 2018]*

165. Very small establishment under section 2(*f*) of the Labour Laws (Simplification of the Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 means an establishment in which not more than ..... persons are employed or were employed on any day of the preceding twelve months.

(A) 5

(B) 4

(C) 10

(D) 9 *[Dec. 2018]*

166. Section 15 of the Apprentices Act, 1961 deals with:

(A) Records and Returns

(B) Hours of work, overtime, leave and holidays

(C) Settlement of disputes

(D) Offer and acceptance of employment *[Dec. 2018]*

167. As per the Employees Pension Scheme, 1995, members on attaining the age of fifty-eight years and having rendered minimum of ..... years of contributory service qualify for superannuation fund.

(A) 5

(B) 10

(C) 15

(D) 20 *[Dec. 2018]*

Answers:

1.	(A)	2.	(D)	3.	(B)	4.	(D)	5.	(C)	6.	(B)	7.	(A)
8.	(A)	9.	(C)	10.	(D)	11.	(B)	12.	(A)	13.	(C)	14.	(C)
15.	(B)	16.	(A)	17.	(C)	18.	(B)	19.	(A)	20.	(C)	21.	(C)
22.	(D)	23.	(C)	24.	(B)	25.	(D)	26.	(D)	27.	(A)	28.	(A)
29.	(B)	30.	(A)	31.	(B)	32.	(A)	33.	(C)	34.	(A)	35.	(D)
36.	(D)	37.	(A)	38.	(A)	39.	(D)	40.	(D)	41.	(B)	42.	(A)
43.	(D)	44.	(D)	45.	(C)	46.	(A)	47.	(C)	48.	(B)	49.	(D)
50.	(A)	51.	(A)	52.	(D)	53.	(D)	54.	(D)	55.	(C)	56.	(C)
57.	(D)	58.	(D)	59.	(C)	60.	(B)	61.	(A)	62.	(B)	63.	(C)
64.	(D)	65.	(A)	66.	(C)	67.	(A)	68.	(D)	69.	(D)	70.	(D)
71.	(D)	72.	(C)	73.	(C)	74.	(C)	75.	(B)	76.	(C)	77.	(D)
78.	(A)	79.	(D)	80.	(B)	81.	(A)	82.	(C)	83.	(D)	84.	(D)
85.	(B)	86.	(D)	87.	(B)	88.	(C)	89.	(B)	90.	(B)	91.	(A)
92.	(C)	93.	(C)	94.	(A)	95.	(D)	96.	(D)	97.	(D)	98.	(A)
99.	(B)	100.	(D)	101.	(B)	102.	(B)	103.	(D)	104.	(C)	105.	(A)
106.	(B)	107.	(C)	108.	(A)	109.	(C)	110.	(D)	111.	(B)	112.	(C)
113.	(B)	114.	(C)	115.	(D)	116.	(D)	117.	(B)	118.	(C)	119.	(D)
120.	(D)	121.	(C)	122.	(D)	123.	(D)	124.	(D)	125.	(C)	126.	(D)
127.	(D)	128.	(C)	129.	(B)	130.	(A)	131.	(D)	132.	(D)	133.	(D)
134.	(D)	135.	(C)	136.	(D)	137.	(C)	138.	(D)	139.	(C)	140.	(A)

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148.	(C)	149.	(C)	150.	(D)	151.	(D)	152.	(C)	153.	(D)	154.	(B)
155.	(B)	156.	(D)	157.	(A)	158.	(C)	159.	(C)	160.	(D)	161.	(A)
162.	(C)	163.	(A)	164.	(D)	165.	(D)	166.	(B)	167.	(B)		

20 : SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION & REDRESSAL) ACT, 2013

1. Priti and Sajid are co-workers. Sajid makes lewd comments about Priti's looks and body when they are alone. Sajid continued the behaviour even after she asked him to stop. Despite this, Priti never reported this because there was no evidence or witness to prove her allegation. One day when Priti and Sajid were alone in the workplace, Sajid made physical advances towards Priti. During this incident, another employee Ranvir walks in and witnesses the incident. Priti files a complaint with the Internal Committee against Sajid and submits the details of Ranvir as the witness. When the Internal Committee tried to contact Ranvir, they got to know that he has taken a long leave and is not in a position to participate in the inquiry. This can result in a delay in the completion of the inquiry.

Suggest proper course of action.

(A) Internal Committee will wait for return of Ranvir so that his views about the incident can be heard.

(B) Internal Committee has powers similar to that of a Civil Court and it can summon and enforce the attendance of any person and examine him on oath. Hence, Internal Committee can ask Ranvir to attend the inquiry in-person or online.

(C) Internal Committee can dismiss Sajid without any explanation as the case pertains to sexual harassment.

(D) Internal Committee can file Police Complaint against Sajid.

2. Bhanwari Devi, a dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage. This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women's rights activists and lawyers filed public interest litigation. The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In this case Supreme Court of India framed –

(A) Prevention of Sexual Harassment Guideline

(B) Vaibhavi Guidelines

(C) Sexual Harassment Rules

(D) Vishaka Guidelines

3. The Supreme Court then, in ....., stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect.

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(B) *Apparel Export Promotion Council* v. *A.K Chopra*

(C) *Vishaka* v. *State of Rajasthan*

(D) *Bhanwari Devi* v. *State of Rajasthan*

4. Geeta was working in XYZ Ltd. Due to heavy workload she decided to work up to 7 p.m. for few more days. During this period his senior officer tried to make physical contact and advances and also makes demand for sexual favours. Senior officer also warned Geeta that he will dismiss her from job if she tells anyone about that incident. Help the Geeta advising her as to period for filing complaint of sexual harassment against her senior officer to Internal Committee?

(A) Within a period of three months

(B) Within a period of one month from the date of incident.

(C) Within a period of two months from the date of incident.

(D) Within a period of four months from the date of incident.

5. In ....., the Delhi High Court observed that anonymous complaints under the Act are bound to be rejected.

(A) *Vishaka* v. *State of Rajasthan*

(B) *Manjeet Singh* v. *Indraprastha Gas Limited*

(C) *Apparel Export Promotion Council* v. *A.K Chopra*

(D) *Medha Kotwal Lele* v. *Union of India*

Answers:

1.	(D)	**2.**	(D)	**3.**	(A)	**4.**	(A)	**5.**	(B)

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