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Q1. Renuka Soaps and Detergents Limited realised on 2nd May, 2022 that particulars of charge created on 10th March, 2022 in favour of a Sankalp Commercial Bank Limited were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2022 instead of 2nd May, 2022? Explain with reference to the relevant provisions of the Companies Act, 2013. [MTP-Nov 19]

Ans. The charge in the present case was created after 02-11-2018. The relevant provisions of the Companies Act, 2013 applicable in the present case are as explained below:
Section 77 (1)- Initially, the prescribed particulars of the charge together with the instrument of charge, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar **within 30 days of its creation**. In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to **extend** the original period of 30 days **by another 30 days** (i.e. sixty days from the date of creation) on payment of prescribed **additional fee**. Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the jurisdictional Registrar of Companies after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2022 instead of 2nd May, 2022, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a **further period of sixty days** but the company is required to **pay ad valorem fees**. Since the first sixty days from creation of charge have expired on 9th May, 2022, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 9th May, 2022 after paying the prescribed **ad valorem fees**. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

Q2. Grish (Private) Limited on 7th May 2022 obtained ₹ 25 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹ 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Grish (Private) Limited, from a financial institution. Is the company required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013? [MTP-May 25, RTP-Jan 26]

Ans. As per the provisions of section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage

Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favour of the lender. Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard.

Thus, when Grish (Private) Limited obtains **working capital loans** from financial institutions by offering stock and Accounts Receivables as security, it is **required to create a charge** on such property or assets in favour of the lender.

Hence, for Rs. 25 Lakh working capital loan, it is required to create a charge on it. Grish (Private) Limited is **not required to create a charge** for Rs. 5 Lakh adhoc overdraft on the personal guarantee of a director. **Since**, charge is always created on the property or assets of a company and **personal guarantee of director is not a property or asset of company**.

- Q3. Nivedita Limited hypothecated its plant to a Nationalized Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full. The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013, to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

[PYQ-Nov 19]

- Ans. In the given question, Nivedita Limited could not get response from the bank with respect to a letter confirming the settlement of term loan for which the charge was created. The below steps shall be applicable to register the charge in the given circumstances:

According to Section 82(2) of the Companies Act, 2013, the Registrar shall, on receipt of intimation under sub-section (1), cause a **notice** to be sent **to the holder of the charge** calling upon him to show cause within such time **not exceeding 14 days**, as may be specified in the notice, as to why payment or satisfaction in full should not be recorded as intimated to the registrar and if no cause is shown by such holder of the charge, the registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under Section 81 of the Act and shall inform the company that he has done so.

Intimation regarding Satisfaction of Charge

Section 82 of the Companies Act, 2013, requires a company to **give intimation of payment** or satisfaction in full of any charge earlier registered, **to the Registrar** in the prescribed form. The intimation needs to be given **within a period of 30 days from the date of such payment or satisfaction**. **Extended period** of intimation: Proviso to Section 82 (1) extends the period of intimation from 30 days to 300 days. Accordingly, it is provided that the Registrar may, on an application by the company

or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of prescribed additional fees.

- Q4. Ranjit acquired a property from PQR Limited which was mortgaged to Pyramid Bank. He settled the dues to Pyramid Bank in full and the same was registered with the sub-registrar who noted that the mortgage had been settled. But neither the company nor Pyramid Bank filed particulars of satisfaction of charge with the jurisdictional Registrar of Companies. Can Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013. [ICAI Study Mat]

- Ans. Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charge even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the Register of Charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

- Q5. Naveen Tools Ltd (NTL) mortgaged its factory land and building (by equitable mortgage) on 1st March, 2023 to Goodwill Bank and availed a credit limit of Rs. 200 lakh. Although the credit limit was sanctioned by the Bank, but the NTL actually availed such credit facility only in the month of August, 2023, when it issued a cheque in favour of a creditor towards the payment of raw material purchased from it.
- During the course of statutory audit, the auditor pointed out before the management of the NTL about the non-compliance of registration of charge with the Registrar within the stipulated time. The

company officials informed that although the mortgaged backed credit limit was sanctioned in March 2023, but the company had not availed the facility till the month of August, 2023.

So, the liability of registration of charge arises from the date of availment only when the company issued a cheque from the mortgaged backed credit limit account and not when the loan was sanctioned and credit limit was assigned.

Further, the company management pleaded that it is the responsibility of the financier i.e. Goodwill Bank to get the charges registered with the Registrar since the registration of charge is to be effected in favour of the Bank and for Bank's own benefit, so the NTL is in no way responsible for getting registration or for delayed registration.

In the light of above facts, referring to the provisions of the Companies Act, 2013, discuss:

- (i) When trigger point for the registration of charge shall arise,
 - (a) at the time of credit limit sanctioned by the Bank; or
 - (b) at the time of availing of credit limit when cheque was issued by the company?
- (ii) What are the consequences for non-registration of charge on the Naveen Tools Ltd?

[PYQ-Sep 24]

Ans. (i) According to section 77(1) of the Companies Act, 2013, it shall be the duty of a company creating a charge to register it with the Registrar of Companies within 30 days from the date of creation of the charge.

The obligation to register a charge arises not merely at the time of sanctioning the credit limit but when the charge is created. Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favor of the lender.

The Trigger point for registration of charge arises when the Bank has sanctioned the mortgaged backed credit limit, documentation was done, papers of the property for creation of the mortgage was tendered by the company for creation of fixation of the credit limits.

Here, the words 'creating a charge' refers to the accepting of the property papers for the purpose of creation of charge. Thus, it is the date when the credit limits were sanctioned as assigned to the company and not the date when the company had actually drawn a cheque from such credit limit.

(ii) Consequence of non-registration of charge [Section 77 (3) & (4)] No charge created by a company shall be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other creditor unless it is duly registered and a certificate of registration of such charge is given by the Registrar.

This means that the charge will become void against the liquidator and other creditors of the company. That is to say, at the time of winding up, the creditor whose charge has not been registered will be

reduced to the level of an unsecured creditor. Neither the liquidator nor any other creditor will give legal recognition to a charge that is not registered.

Another important consequence of non-registration is that the charge-holder loses priority. Any subsequent registration of a charge (i.e. even if it is registered within the extended period instead of original thirty days) shall not prejudice any right acquired in respect of any property before the charge is actually registered.

Q6. PQR Limited, a manufacturing company, is in the process of expanding its operations. To support this expansion, PQR Limited has acquired a plot of land along with the buildings on it from ABC Limited, another company in the same industry. The property, however, is subject to an existing charge, created in favor of a bank as security for a loan taken by ABC Limited. This charge had been registered by ABC Limited at that time. The directors of PQR Limited are of the opinion that as the charge for the property was already created, there is no further obligation to be fulfilled from the side of PQR Limited.

After negotiations, the bank, as the charge holder, consents to the sale and transfer of the property to PQR Limited with the condition that PQR Limited must register a new charge over the acquired property as security for its own loan obligations.

Advise whether the contention of directors of PQR Limited is correct. Give your answer in terms of the provisions of the Companies Act, 2013. [RTP-Jan 25]

Ans. The provisions of section 77 relating to registration of charges shall, so far as may be, apply to:
a. a company acquiring any property subject to a charge within the meaning of that section; or
b. any modification in the terms or conditions or the extent or operation of any charge registered under that section.

According to section 79(a) of the Companies Act, 2013, in case of a property where charge is already registered and if it is sold with the permission of the holder of charge, it shall be the duty of the company acquiring it to get the charge registered in accordance with section 77.

According to the provisions of section 77, when a company acquires property that is subject to an existing charge, it is the duty of the acquiring company (PQR Limited in this case) to register the charge as its own. This means that PQR Limited must create a fresh charge over the acquired property and register it with the Registrar of Companies (RoC) as per section 77.

Now upon acquisition, it is PQR Limited's responsibility to ensure that the previous charge is effectively discharged and that the new charge is registered in its name, reflecting PQR Limited as the current owner and debtor of the charge.

Hence, the contention of directors of PQR Limited that since the charge for the property was already created, there is no further obligation on part of PQR Limited, is not correct.

- Q7. RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made RST Ltd. liable for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders. [RTP-May 19]

Ans. As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013.

Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

- Q8. The Director of Delight Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

(i) Mr. A, holding equity shares of face value of Rs. 10 lakhs has not paid an amount of 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend? [MTP-Nov 21, RTP-May 18]

Ans. (i) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013.

As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case **no offence shall be deemed to have been committed** where the **dividend has been lawfully adjusted** by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of 10 Lakhs and has not paid an amount of 1 lakh towards call money on shares.

Referring to the above provision, Mr. A is eligible to get Rs. 1.20 lakh towards dividend, out of which an amount of 1 lakh can be adjusted towards call money due on his shares. Rs. 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above-mentioned provision, **company can adjust sum of Rs. 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.**

(ii) According to section 123(5). dividend shall be payable only to the registered shareholder of the share or to his order or to his banker.

Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017.

Since, he became registered shareholder before declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, **Mr. Raj will be entitled to the dividend.**

Q9. Mr. R, holder of 1000 equity shares of Rs. 10 each of AB Ltd. approached the Company in the last week of September, 2019 with a claim for the payment of dividend of Rs. 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2011 with respect to the financial year 2010-11. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education and Protection Fund. Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name.

OR

[PYQ-Jan 21]

Manish, a shareholder of a company has not claimed his dividends from the company for the last 10 years due to different reasons. He wants to know whether he will be able to recover the dividends declared by the company for all these years. Explain to him, the relevant legal provisions.

[PYQ-Jan 25]

Ans. According to section 124 of the Companies Act, 2013:

- 1) Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account - Where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of declaration, the company shall, within 7 days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank,
- 2) Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF) - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.
- 3) Transfer of Shares to IEPF- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.
- 4) Right of Owner of 'transferred shares' to Reclaim - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

As per the provisions of section 125(3) of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.

In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e., expiry of 30 days from 31.08.2011 to last week of September 2019).

As a result, his unclaimed dividend (Rs. 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account.

Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of Rs. 2,000 (declared in Annual General Meeting on 31.8.2011).

In terms of the above stated provisions, Mr. R should be advised as under:

- (i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.
- (ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.

Q10. CHAN Heavy Engineering Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20%, and 25%. Unfortunately, due to obsolescence of a special part of machinery, company incurred losses in current financial year, Even though, during the FY 2021-22, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the FY 2021-22 in its meeting held on 5 August, 2022, and recommended a final dividend of 15% in this board meeting

The general meeting of the shareholders was convened on 31 August, 2022. The shareholders of the company demanded that since interim dividend 10% was declared by the company, so the final dividend should not be less than 20%, It was also submitted that Rate of Declaration of dividend in immediately preceding three years were 15%, 20%, and 25% But the Company Secretary emphasised that final dividend cannot be increased.

- (i) Whether company can declare interim dividend, if company incurred losses during the current financial year ? What should be correct rate of interim dividend ?
- (ii) Do you think decision of company secretary is correct ? What should be correct rate of final dividend ?

Justify your answer with reference to provisions of the Companies Act 2013. [PYQ-May 23]

Ans. **Interim dividend:** As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

Final dividend- The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.

Accordingly, following shall be the answers:

- (i) **Interim dividend:** According to the given facts, CHAN Heavy Engineering Ltd. incurred losses in current financial year 2021-2022. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively.

Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates $(15+20+25=60/3)$ at which dividend was declared by it during the immediately preceding three financial years.

Yes, as per law company can declare interim dividend, even if company incurred losses during current financial year. Dividend to be declared shall be given at the rate not exceeding 20%

(ii) Final dividend: Board of Directors of the Company recommended a final dividend @15% for financial year 2021-2022 in the meeting held on 5th August 2022. It was approved in the general meeting. However, shareholders demanded that since Interim dividend was at the rate of 10%, so final dividend should not be less than 20%. The general meeting cannot declare the dividend at a rate higher than the rate of dividend recommended by the Board.

Yes, the decision of Company Secretary that final dividend cannot be increased beyond the rate of 15% as recommended in the Board Meeting, is correct.

Q11. The dividend amounts received or receivable on equity shares held by Mr. Deepak for the financial year 2021-22 was as follows:

Name of Company	Dividend Declaration Date	Dividend Amount	Remarks
Sarsi Limited	25.08.2022	800	Dividend was paid on 23.10.2022
Chandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period

Also, Mr. Deepak holds 100 cumulative preference shares of face value Rs. 1,00,000, in aggregate, of Arya Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Arya Limited did not earn any profits.

In the context of aforesaid case-scenario, please answer to the following question(s):-

- What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?
- Whether Arya Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22? [RTP-Nov 23]

Ans. (a) According to Section 127 of the Companies Act, 2013

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, then the company shall be liable to pay simple interest at the rate of 18% p.a, during the period for which such default continues.

Further, in terms of Notification No. GSR 465 (E), dated 05-06-2015, section 127 dealing with punishment shall apply to the Nidhis, subject to the following modification:

In case the dividend payable to a member is Rs. 100 or less, it shall be sufficient compliance of the provisions of section 127, if the declaration of the dividend is announced in the local language in one

local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi company for at least 3 months.

(i) In case of Sarsi Limited

Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Deepak, its share-holder. The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, within 30 days of dividend declaration i.e. by 24.09.2022.

Accordingly, the interest payable by Sarsi Limited would be calculated as follows:

Dividend Amount	Dividend Declaration Date	Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022	Interest
800	25.08.2022	$800 \times 18\% \times 29/365$	11

In case of Chandol Nidhi Limited

Here, Chandol Nidhi Limited is a Nidhi company and the dividend payable to Mr. Deepak was Rs.100. So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the dividend declared was announced by the company in local language in one local newspaper of wide circulation and announcement of the said declaration was also displayed on the notice board of the company for at least 3 months i.e. till 04.12.2022 (3 months from 04.09.2022).

Accordingly, if the aforesaid compliances have been made by Chandol Nidhi Limited then no punishment could be imposed upon it, otherwise, it would be liable for punishment.

(b) A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years.

Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

Here, it is given that during financial year 2021-22, Arya Limited did not earn any profits and accordingly, in such case the company may accumulate such dividend for financial year 2021-22 to be carried forward to following financial year(s) and such arrears of dividend would be payable from the following financial years profits.

Q12. Zeeta Polymers (P) Ltd. has earned profits for the first two quarters of the financial year 01.04.2024 to 31.03.2025. The Company has calculated, declared and paid interim dividends based on profits earned in the first two quarters after providing for full-year depreciation. The Company incurred losses in the next two quarters.

The Company has incurred overall losses for the financial year ending 31.08.2025, leaving no surplus in its profit and loss account. The Company has not carried-over losses and unabsorbed depreciation. Applying the provisions of the Companies Act, 2013, decide whether the company contravened the provisions of the Companies Act, 2013 by declaring interim dividends despite incurring overall losses for the financial year?

[MTP-Sep 25]

Ans. As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare an interim dividend at any time during the period from the closure of the financial year till the holding of the Annual General Meeting out of the surplus in the profit and loss account or out of profits of the financial year for which the interim dividend is sought to be declared or out of the profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of the interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

Further, as per the third proviso to section 123(1), the company shall not declare dividends unless the carried over previous losses and depreciation are set off against the profits of the current year. Accordingly, it may be inferred that while declaring the interim dividend, the company has complied with the provisions of section 123 and rules made thereunder for calculating the amount of interim dividend, then there is no contravention of the provisions of the Act, even if the company incurs losses in the succeeding quarters of its financial year leading to overall losses for the financial year.

As the dividend includes interim dividend, it is essential under section 123(2) of the Companies Act, 2013 for a company to provide depreciation for the whole of the year and not proportionately for any fraction of the year before declaring an interim dividend.

This is because the provision for depreciation is a condition precedent for the declaration or payment of any dividend, and all provisions which apply to the payment of dividends shall also apply in the case of an interim dividend. Thus, the company has not erred.

Q13. Long Boots Ltd. a listed company is engaged in the manufacturing of shoes and related accessories. The Business is set on a recovery mode by the induction of the new Production Manager, Mr. A. The Board of Directors of the company has recommended the declaration of a dividend of Rs. 50 Lakh after a gap of eight years during which profits were inadequate to distribute the same. The dividend thus proposed is to be met partially out of the current year profit of Rs. 16 lakh. Accumulated profits during the past eight years were Rs. 170 lakh which is 25% of the total share capital of the company. Referring to the provisions of the Companies Act, 2013 decide, whether the conditions with regard

to declaration of dividend in case of inadequate profit are met? You are requested to support your answer with requisite calculations.

[PYQ-May 24]

Ans. According to second proviso to section 123, where in any year there are no adequate profits for declaring dividend, the company may declare dividend out of the accumulated profits earned by it in previous years and transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014. Free Reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.

Under Rule 3 such declaration shall be subject to the following conditions:

CONDITION I

The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

CONDITION II

The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

CONDITION III

The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

CONDITION IV

The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

In the given question, since Long Boots Ltd. current year profits of Rs. 16 lakh are insufficient to meet the dividend requirement of Rs. 50 lakh, hence the company has to fulfil the conditions as prescribed under Rule 3 (mentioned above).

Particulars	Amount (Rs.)
Amount of dividend declared (A)	50 lakh
Current year profits (B)	16 lakh
Amount to be withdrawn accumulated profits [(A)- (B)]	34 lakh
Accumulated profits during the past 8 years	170 lakh
Total share capital of the company [170/25%]	680 lakh

Conditions	Calculation	Met/Not Met
I	This condition is not applicable the company has not declared any dividend in each of the three preceding financial year.	-
II	Paid-up share capital and free Reserves	680+170 lakh
		850 lakh (C)
	10% of (C) Amount to be withdrawn accumulated profits i.e. 34 lakhs is less than (C)	85 lakh Met
III	The company has since made profit in the financial year in which dividend is declared.	Met
IV	Free Reserves (D) Amount drawn for payment of dividend (E) Balance of reserves after such withdrawal (F) = (D) - (E) 15% of its paid up share capital (G) (F) more than (G)	170 lakh 34 lakh 136 lakh 102 lakh Met

In the given question, since all the conditions are met, hence Long Boots Ltd. has validly declared dividend.

Q14. Doraemon limited has prepared its financial statements for the year 2018-19. Mr. Nobita, the Managing director the company is declining to sign these financial statements on the grounds that it is only the duty of the Board of the directors to sign the financial statements as approved by the Board and he is not liable to sign the same. Now, Mr. Nobita has approached you advise him regarding his responsibility for signing the financial statement. Advise Mr. Nobita regarding his responsibility for signing the financial statements as per the provisions of the Companies Act, 2013.

Mr. Nobita has also provided to you the following more information:

- The Board as a policy does not authorise the chairperson of the company to sign the financial statements
- The company has appointed Ms. Shizuka as its Company Secretary

[RTP-Nov 19]

Ans. According to section 134(1) of the Companies Act, 2013, the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

As per the facts of the question, the Board has not authorised the chairperson of the company to sign the financial statements. Hence, the financial statement shall be signed by two directors out of which one shall be managing director [i.e. Mr. Nobita]

Q15. The balances extracted from the financial statement of ABC Limited are as below:

S.No.	Particulars	Balances as on 31-03-2020 as per Audited Financial Statement (Rs. in Cr)	Balances as on 30-09-2020 (Provisional Rs. in crore)
1.	Net Worth	100	100
2.	Turnover	500	1000
3.	Net Profit	1	5

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether ABC Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2020-21. [PYQ-July 21]

Ans. Corporate Social Responsibility (CSR) Committee: According to section 135(1) of the Companies Act, 2013, every company having:

- 1) net worth of rupees 500 crore or more, or
- 2) turnover of rupees 1000 crore or more or
- 3) a net profit of rupees 5 crore or more

during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

In the given question, the company does not fulfil any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2019 to 31.3.2020).

Hence, ABC Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2020-21.

Q16. Gupta Limited, is a company incorporated in India, Gupta Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco.

Gupta Limited is in the process of finalization of the consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Gupta Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Gupta Limited. The subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws. Advise, how would Gupta Limited deal with the consolidation of such financial statements. [RTP-Nov 22]

Ans. According to fourth proviso to section 137(1) of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

It has also been clarified vide General Circular no. 11/2015 dated 21 July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Hence, Gupta Limited, would have to get the standalone financial statements of Best Shoes Limited translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.

Further Gupta Limited would need to file such unaudited financial statement of Best Shoes Limited along with a declaration to this effect along with a translated copy of the financial statement in English.

Further the format of accounts of Moroccan subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Q17. Syska Ltd. (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	₹ 5.00 crore	₹ 3.75 crore
2021-22	₹ 7.00 crore	₹ 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23 if it is mandatory. You are requested to advise the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013. [RTP-May 23]

Ans. According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent, of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

In the instant case,

- 1) Net Profit before tax of Syska Ltd. for the FY 2021-22 is ₹ 7 crore, hence, Syska Ltd. is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ₹ 5 crore.
- 2) Minimum contribution towards CSR will be- 2% of average net profits since incorporation (Syska Ltd. was incorporated on 1.04.2020.)

Average Net Profit since incorporation: $(5 \text{ crore} + ₹ 7 \text{ crore}) / 2 = ₹ 6 \text{ crore}$

Minimum contribution towards CSR will be: $2\% \text{ of } ₹ 6 \text{ crore} = ₹ 0.12 \text{ crore or } ₹ 12 \text{ Lacs}$

Q18. The aggregate value of the paid-up share capital of ABC Security Services, was 200 crores divided into 20 crore equity shares of 10/- each at the end of the Financial Year 2021-22 having its registered office at Mumbai. This company had been registered with an authorized share capital of 300 crore divided into 30 crore equity shares of 10/- each.

The extract of Balance Sheet of the company as on 31 March, 2022 showed the following figures:

Particulars	Rs. (Crores)
Authorised Share Capital	300
Issued, Subscribes and Paid-up Share Capital	200
Free Reserves Created out of prof its	200
Securities Premium Account	80
Profit & Loss Account (Cr.)	50
Reserves out of Revaluation of assets	25
Misc. Expenditure not written off	10

Turnover of the company during the Financial Year 2021-22 was Rs. 800 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was 4 crore only.

Praveen, Company Secretary of the company advised that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2022 a CSR committee was formed to comply with the provisions of Corporate Social Responsibility.

The Board of Directors of the company constituted of the following persons as its directors:

Mohan Singh	Managing Director
Rohit and Bhavna	Independent Directors
Venkatesh, Isha, Mohit and Muskan	Directors

On the basis of above facts and by applying applicable provisions of Companies Act, 2013, answer the following:

- (i) Is the contention of Praveen, Company Secretary of the company that the company attracts the provisions of section 135 of the Companies Act, 2013 and is required to form a CSR committee is correct? Support your answer with the applicable provision and the required calculation.
- (ii) It was decided that Mohan Singh, Venkatesh, Isha and Bhavna will be the members of CSR committee. Is this decision correct in the light of provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014? [PYQ-May 23]

Ans. (i) **Correctness of the contention and required calculations:** According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Net worth meaning and calculation: As per the requirement, "Net worth" in the light of the provided particulars calculated as Rs. 520 crore [aggregate value of the paid-up share capital (Rs. 200 crore), all reserves created out of the profits (Rs. 200 crore), securities premium account (Rs. 80 crore) and

debit or credit balance of the profit and loss account (Rs. 50 crore), after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off (Rs. 10 crore), as per the audited balance sheet, but does not include reserves created out of revaluation of assets, writeback of depreciation and amalgamation], Turn over given as Rs. 800 crore and Net profits Rs. 4 crore. Since the net worth is not less than Rs. 500 crore section 135(1) is attracted.

Yes, the contention of Praveen, the Company Secretary is correct w.r.t the constitution of CSR Committee as per the compliance of requirement of section 135 of the Companies Act, 2013.

(ii) Correctness of constitution of CSR Committee: As per requirement, Corporate Social Committee of the Board shall be consisting of three or more directors, out of which at least one director shall be an independent director. Decision that Mohan Singh, Venkatesh, Isha and Bhavna (Independent Director) will be the members of CSR Committee, is correct.

In Nov. 2023 ICAI asked same ques with one more part which is given below-

The company proposed a list of activities to spend 4% of the average net profits of the company made during the immediately preceding three financial years in pursuance of its CSR Policy, as under:

- (1) The CSR projects for the benefit of employees of the company and their families only.
- (2) A contribution of ₹ 50,000 to a political party under the provisions of section 182 of the Companies Act, 2013.
- (3) A contribution to the PM CARES Fund during Covid pandemic.
- (4) Local activities like promotion of child and women education.

Whether activities proposed by company were in accordance with provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014? [PYQ-Nov 23]

Ans. 1. No 2. No 3. Yes 4. Yes

Q19. Quick Money Limited attracts the provisions of section 135 of the Companies Act, 2013 and it has minimum average obligation to spend Corporate Social Responsibility (CSR) amount of 15 crore during each of the preceding five years. In this connection, the Board of Directors of the company needs your expert views on the following matters:

- (i) What is the meaning of "impact assessment"?
- (ii) Whether impact assessment is required to be taken by all the companies?
- (iii) Who can conduct impact assessment? [PYQ-Jan 25]

Ans. Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 provides the class of companies that are required conduct an impact assessment.

Every company having average CSR obligation of ten crore rupees or more in pursuance of section 135(5) of the Companies Act, 2013, in the three immediately preceding financial years, shall undertake

impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

The above-mentioned companies may undertake impact assessment, through an independent agency.

Alternate Answer

(i) Meaning of Impact Assessment:

The impact assessment is an exercise to assess the social, economic and environmental impact of a particular CSR project. Impact assessment intends to evaluate "social, economic and environmental return on investment". It is the exercise of taking a retroactive view of the Corporate Social Responsibility (CSR) activities completed by the entity and assess the effects of these activities on various stakeholders like employees, customers, communities and the environment.

Impact assessment is seemingly another step to encourage companies to make considered decisions before deploying CSR amounts and assess the impacts of their investments to capture the impact being generated by them. This shall not only serve as feedback for companies to plan and better allocate resources, but shall also deepen the impact of CSR.

(ii) Whether the impact assessment is to be taken by all Companies?

Since impact assessment is cost-intensive and time consuming, the idea is to obligate only certain classes of companies which have large amount of spending and have completed their large CSR projects.

Accordingly, Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 requires the following class of companies to conduct an impact assessment:

Every company having average CSR obligation of Rs. 10 crore or more in the three immediately preceding financial years of their CSR projects having outlays of 1 crore rupees or more, and which have been completed not less than 1 year before undertaking impact assessment.

(iii) Who can conduct an impact assessment?

The impact assessment shall be conducted by an independent agency.

Q20. BBQ Ltd., with its registered office in Hyderabad, has two branch offices, one located in Delhi and the other in London. The accounting transactions of the branches are recorded and all books of account are maintained in the branches. The branch accountant of the Delhi branch sent monthly and the branch accountant of London sent quarterly summarized trial balance profits and loss account and balance sheet to the Hyderabad office. One of the assistants of the audit team, Mr. Naveen, raised the issue that the branches of the company maintain its books and records at branches, so it defaults on not maintaining the proper books of account at the registered office. Mr. Naveen further objected to the fact that the London branch sent their summarised returns on a quarterly basis instead of a monthly basis.

You are requested to analyse and decide the validity of both the objections of Mr. Naveen relating to the place of maintaining the books of account and sending summarised returns thereof to the registered office by the branch offices of the company referring to the provisions of the Companies Act, 2013.

[PYQ-May 24]

Ans. 1. Provisions of section 128 of the Companies Act, 2013, requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office. It also provides that all or any of the books of account may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board, the company shall within seven days thereof file with the registrar a notice in writing as per rule 2A of the Companies (Accounts) Rules, 2014 in form AOC-5 giving full address of that other place.

Thus, in the given case, the books of accounts of BBQ Ltd. should be prepared and maintained at registered office in Hyderabad. However, the same can be maintained at the respective branches if the Board of directors have decided so and intimated the registrar a notice in writing within 7 days thereof giving full address of that other place (i.e. other than the registered office).

Hence, objection of Mr. Naveen is valid as intimation to registrar is not specified in the question.

2. Where a company has a branch office in or outside India, it shall be deemed to have complied with the requisite provisions of section 128(1) if-

- a) Proper books of account relating to the transactions effected at the branch office are kept at that office, and
- b) Proper summarised returns are sent on periodical basis by branch office to the company at its registered office or other place.

As per Rule 4(1) of the Companies (Accounts) Rules, 2014, the summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.

Since, London office was sending summarized returns to the registered office in Hyderabad on quarterly basis, which is as per the requirement of law, hence, the objection of Mr. Naveen is invalid.

Q21. Madan Pvt. Ltd. is a partially owned subsidiary of Puri Ltd., holding 90% of its shares. The company does not have any listed securities and is not in the process of listing on any stock exchange. Puri Ltd., the holding company, prepares and files consolidated financial statements (CFS) with the Registrar in compliance with applicable Accounting Standards.

Considering the above, analyze and examine the following situations:

1. Is Madan Pvt. Ltd. required to prepare its own consolidated financial statements? What are the requisite conditions for the same?

2. How does it matters, if Madan Pvt. Ltd. had securities listed on a recognized stock exchange?

[RTP-May 25]

Ans. As per section 129 of the Companies Act, 2013, where a company has one or more subsidiaries or associate companies, it shall in addition to financial statements prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries, associate companies and joint ventures in the same form and manner as that of its own and in accordance with applicable accounting standards. Such CFS shall also be laid before the annual general meeting of the company along with the laying of its financial statement.

Exemptions from preparation of CFS

According to section 129(3), the preparation of consolidated financial statements by a company is not required if it meets the following conditions:

- It is a wholly owned subsidiary, or is a partially owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;
- It is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in or outside India; and
- Its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.

In line with stated legal requirements, following are the answers:

1. Madan Pvt. Ltd. may qualify for an exemption from preparing consolidated financial statements because:

- It is a partially owned subsidiary (90% ownership by Puri Ltd.).
- It does not have any listed securities and is not in the process of listing on any stock exchange i.e., have no publicly trading of securities.
- Its holding company, Puri Ltd., prepares and files consolidated financial statements with the Registrar in compliance with applicable Accounting Standards.

Since Madan Pvt. Ltd. is a partially owned subsidiary, it must ensure that all its members, including remaining shareholders (10% in this case), are informed in writing about the decision not to present CFS, and it must maintain proof of delivery of such communication. No member should object to this exemption.

2. If Madan Pvt. Ltd. had its securities listed on a recognized stock exchange or was in the process of being listed, it would not qualify for the exemption and would be required to prepare and present its own consolidated financial statements as per the applicable provisions.

Q22. Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following:

1. A member individually holding shares with face value of 3 800 which amounted to 0.16% of the total paid-up share capital.
2. Two members jointly holding shares with face value of 1,600 which amounted to 0.32% of the total paid-up share capital.
3. Forty-two members each holding individually shares with face value of 600 which amounted to holding 0.12% of the total paid-up share capital for each such member.
4. All the remaining members holding individually more than 1.2% of the total paid up share capital of the company.

In the AGM held on 25th August, 2022, members were not provided with the facility to vote by electronic means.

In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd, was required to send the notice of AGM along with relevant documents to all its members as aforesaid?

[RTP-May 23]

Ans. In case of Nidhi company -

Section 136 (1) of the Companies Act, 2013, shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital, whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy.

Here, Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than Rs. 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less. Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:-

- (i) Two members jointly holding shares with face value of Rs. 1,600 which amounted to 0.32% of the total paid-up share capital
- (ii) All the remaining members holding individually more than 1.2% of the total paid -up share capital of the company.

For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.

Q23. SDF Ltd., an unlisted company has shared the following financial data for the F.Y. 2024-25:

Equity Paid-up capital	₹ 48 crore
Turnover	₹ 195 crore
Deposits as on 31.03.2025	₹ 20 crore
Loans outstanding from IBL Bank Pvt. Ltd. as on 30.09.2024	₹ 100.59 crore
Loans outstanding from IBL Bank Pvt. Ltd. as on 01.02.2025	₹ 96.50 crore
Loans outstanding from IBL Bank Pvt. Ltd. as on 31.03.2025 after partial repayment	₹ 75.10 crore
Net worth	₹ 149.25 crore

The company has invited your expert advice on the following issues, considering the provisions of the Companies Act, 2013:

- (i) Whether it would be mandatory to appoint an internal auditor for the company?
- (ii) Further in case the answer is in affirmative, can G who is a professional but neither a CA nor an employee of the concern be appointed as an internal auditor? [PYQ-Sep 25]

Ans. (i) According to it, following class of companies shall be required to appoint an internal auditor or a firm of internal auditors which may be either an individual or a partnership firm or a body corporate, namely:

1. Every listed company;
2. Every unlisted public company having -
 - (a) Paid up share capital of 50 crore rupees or more during the preceding financial year; or
 - (b) Turnover of 200 crore rupees or more during the preceding financial year; or
 - (c) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
- (d) Outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year;

Referring to the above provisions we can conclude that the appointment of an Internal Auditor shall be mandatory as the loans outstanding on one instance i.e. 30.09.2024 is ₹ 100.59 crore, which is above ₹ 100.00 crore, as mandated in the above provisions for compulsory appointment of an Internal Auditor.

(ii) Section 138(1) provides that such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Explanation to Rule 13(1) of Companies (Accounts) Rules, 2014 provides that the internal auditor may or may not be an employee of the company.

In terms of the above provisions, Mr. G can be appointed as an internal auditor of the Company.

- Q24. A company includes the following shareholders also:
- 1) Bank of Baroda (A nationalized Bank) holding 12% of the subscribed capital in the company.
 - 2) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.
 - 3) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of Government Company are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013.

[MTP-Nov 19]

Ans. The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

(ii) According to section 139(5) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, 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, the Comptroller and Auditor- General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

In the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

- Q25. Jethalal Ltd. was incorporated in 1995 in the town of Alwar. Its main business is manufacturing tiles. It is in the process of appointing statutory auditors for the financial year 2021 -22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Jethalal

- a) Komal a qualified Chartered Accountant, holds equity shares of nominal value of Rs. 2,00,000 of Bhide Ltd., which is an associate company of Jethalal Ltd.
- b) Tapoo, a qualified Chartered Accountant, whose son owes Jethalal Ltd. a sum of Rs. 99,000
- c) Taarak, a qualified Chartered Accountant, who has been convicted in the year 2005 by a Court for an offence involving fraud.

[MTP-May 22]

Ans. (a) As per section 141 (3)(d)(i) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if **he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.**

Hence, **Komal is disqualified** to be appointed as an auditor in Jethalal Ltd. as he holds securities in the Bhide Ltd. (associate company of Jethalal Ltd.)

(b) As per section 141(3)(d)(ii) a person is disqualified to be appointed as an auditor if **he, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs, 5 Lacs.**

Hence, **Tapoo is not disqualified** as the limit of indebtedness for the auditor or his relative is exceeding Rs.5,00,000 and in this case Tapoo's son owes only Rs. 99,000.

(c) As per section 141(3)(h), a person who has been **convicted** by a court of an offence involving fraud **and a period of 10 years has not elapsed** from the date of such conviction, shall not be qualified to be appointed as an auditor of a company.

Though Taarak was convicted by a court for an offence involving fraud but **as a period of 10 years have elapsed**, hence, **Taarak is qualified** to be appointed as statutory auditor of Jethalal Ltd.

Q26. L Ltd. having 2,000 members with paid-up capital of 1 crore, decided to hold its Annual General Meeting (AGM) on 21 August, 2022. On 2nd July, 2022, 50 members holding paid-up capital of 6 lakhs in aggregate, has given notice of their intension for a resolution to be passed at the AGM for appointing Dawar & Co., as its Statutory auditor from FY 2022-23 onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term. When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of the company. In the context of aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013:

(i) Whether the said notice was given by adequate number of members and within the prescribed time limit to L Ltd ?

(ii) Whether the company was bound to send such representation to its members made by SNS & Co?

[PYQ-May 23]

Ans. (i) **Special Notice: As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.**

As per section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014-

Where, by any provision contained in this Act or in the Articles of Association of a company, **special notice** is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding Rs. 5 lakhs, has been paid-up.

Rule 23 provides, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than 1% of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

The afore-mentioned **notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting** at which the resolution is to be moved, **exclusive of the day on which the notice is given and the day of the meeting.**

Here, L Ltd. is having 2,000 members with paid-up capital of Rs. 1 crore, and it received a notice from its 50 members holding paid-up capital of Rs. 6 lakh, in aggregate, on 2nd July, 2022 for a resolution to be passed at the ASM to be held on 21st August, 2022.

As the members who gave the notice hold more than Rs. 5 lakh in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st Aug, 2022, and notice was given on 2nd July, 2022 i.e., within the prescribed time limit.

Thus, it can be said that the said **notice was made by adequate number of members** within the prescribed time limit to L Ltd.

(ii) Representation to members: Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, —

- 1) in any notice of the resolution given to members of the company, **state the fact of the representation having been made;** and
- 2) **send a copy of the representation to every member** of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

Yes, as per section 140(4) of the Companies Act, 2013, the company was bound to send the representation made by SNS & Co., to its members.

However, **if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, a copy thereof shall be filed with the Registrar and the auditor may (without prejudice to his right to be heard orally) require that representation shall be read out at the meeting.**

Q27. Mr. Honest, an auditor of MM company Ltd. has colluded with the company for a fraud. The Central Government has applied to Tribunal about the said fraud by Mr. Honest. State the provisions of the Companies Act, 2013 regarding the steps that can be taken by Tribunal when it finds that the auditor of a company has acted in a fraudulent manner. [MTP-Nov 18]

Ans. Auditor acts in a fraudulent manner or abetted or colluded in any fraud [Section 140(5) of the Companies Act, 2013]

(i) On satisfaction of Tribunal that the auditor of a company has acted in a fraudulent manner etc.: Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo moto or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

(ii) Requirement for change of auditor: If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

Q28. XYZ Ltd., a prominent manufacturing company, is in the process of appointing a new auditor for the upcoming financial years. Mr. A is a renowned auditor being considered for the role. During the due diligence process, the following details come to light:

1. Mr. B and Mr. A are partners in ABC & Co. Mr. B has taken a personal loan of Rs. 4 Lacs from XYZ Ltd.'s subsidiary, EFG Ltd., six months ago.

2. Mr. A's relative, Ms. C, has an outstanding debt of Rs. 2 Lacs with DEF Ltd., an associate company of XYZ Ltd., which was taken three months ago.

Discuss about the eligibility of Mr. A for being appointed as an auditor of XYZ Ltd. in view of the provisions of the Companies Act, 2013. [RTP-Sep 24]

Ans. According to section 141(3)(d)(ii) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 Lacs. In this scenario-

1. Mr. A's partner, Mr. B, has a debt of Rs. 4 Lacs from EFG Ltd., a subsidiary of XYZ Ltd.

2. Mr. A's relative, Ms. C, has debt of Rs. 2 Lacs from DEF Ltd., associate company of XYZ Ltd.

The total indebtedness linked to Mr. A's partner and relative is Rs. 6 Lacs (Rs. 4 Lacs + Rs. 2 Lacs), which exceeds the Rs. 5 Lacs threshold mentioned in the provision.

Therefore, Mr. A is disqualified from being appointed as the auditor of XYZ Ltd. under section 141(3)(d)(ii) of the Companies Act, 2013, as the combined indebtedness of his partner and relative surpasses the permissible limit.

- Q29. AB & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2019. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2020. Subsequently, having given consideration to the Board recommendation, AB & Associates were removed at the general meeting held on 25-05-2020 by passing a special resolution subject to approval of the Central Government. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of AB & Associates by X Ltd. under the provisions of the Companies Act, 2013. [PYQ-July 21]

- Ans. Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014. The application shall be made to the Central Government within thirty days of the resolution passed by the Board. The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Hence, in the instant case, the decision of X Ltd. to remove AB & Associates, auditors of the company at the general meeting held on 25-5-2020 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

- Q30. Srinivas Iron and Steel Ltd. is a public sector listed company engaged in the manufacture of high-end steel sheets to be supplied to various other entities country-wide. M/s CVB & Associates, Chartered

Accountants, had been appointed as the statutory auditors of the company for the term F.Y. 2023-24. Later in the year a financial fraud has come to the fore, not reported by the current auditors in their report, leading to dissatisfaction amongst a group of learned members of the company.

The next Annual General Meeting is scheduled on 28.09.2024. The members comprising of Mr. H, Mr. J, Mr. K holding paid up share capital Rs. 1,50,000, Rs. 1,00,000, Rs. 2,50,000 respectively have collectively decided to send a special notice to the company regarding passing of the resolution at the next Annual General Meeting for appointment of an auditor other than M/S CVB & Associates as the auditor for the next term.

Referring to the provisions of the Companies Act, 2013 elaborate:

- (i) Whether the above members can validly issue such Special Notice to the company?
 - (ii) What will be the last date for issue of such Special Notice by the members to the company?
 - (iii) Whether the company would have to communicate about the above Special Notice to other members after receiving the same?
- [PYQ-Jan 25]

Ans. (i) Whether the members Mr. H, Mr. K and Mr. J can validly issue special notice to the company?
According to section 115 of the Companies Act, 2013 (the Act), where, by any provision contained in this Act or in the Articles of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Rule 23 of the Companies (Management & Administration) Rules, 2014, provides that a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

As per section 140 (4) of the Act, a special resolution is required to be passed for appointment of an auditor other than the retiring auditor at an annual general meeting.

Mr. H, Mr. J and Mr. K are together holding shares of $(1,50,000 + 1,00,000 + 2,50,000) = \text{Rs. } 5,00,000$, which is equal to the minimum required shares to be held by members for validly issuing a Special Notice. Hence, they can validly ask the company to issue the special notice.

(ii) Last date for issue of Special Notice:

Rule 3 of Companies Management and Administrative Amendment Rules 2014:

The notice referred to in sub-rule (1) shall be sent by members to the company not earlier than three months but at least fourteen days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Hence, in the above case, the special notice shall be sent by the members to the company latest by 13.09.2024.

(iii) Whether the company needs to communicate the special notice to the other members after receipt of the same?

Yes, the company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

Q31. Stallworth Ltd., a listed company having a paid-up share capital of Rs. 11 crore with a turnover of Rs. 100 crore had appointed an Audit Committee which recommended M/s ANC & Associates, a firm of Chartered Accountants having such qualifications and experience as is required for appointment as the auditor of the company. The next Annual General Meeting (the AGM) was due on 30.09.2023. The Board disagreed with the said recommendation of the committee and refer back to it for reconsideration. The Audit Committee was adamant on appointing the above firm of the chartered accountants.

Discuss in the light of the Companies Act, 2013:

(i) The course of action for Board of Directors to resolve the above deadlock. What would be your answer, if above situation was that of filling the casual vacancy of auditors?

(ii) The steps to be taken by the Board of Directors for appointment of auditors in case there was no requirement of Audit Committee in the company? [PYQ-May 24]

Ans. According to section 177 of the Companies Act, 2013 read with the Companies (Meetings of Board and its Powers) Rules, 2014, in every listed public company- an Audit Committee shall be constituted by Board of directors.

Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014, provides that in case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the Annual General Meeting (AGM) for appointment.

If the Board disagrees with the recommendation of the Audit Committee- It shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

(i) In the given question, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the AGM.

Section 139(8) provides that the Board may fill any casual vacancy in the office of an auditor within 30 days.

Section 139(11) prescribes that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Hence, the position will remain same even in case of casual vacancy.

(ii) In case there was no requirement of appointment of an audit committee then the BOD shall recommend to the members in the AGM, the name of an individual or a firm which can be appointed as auditor after considering qualifications and experience of such individual or firm and other matter as laid therein.

Q32. M/s AT & Co. is a proprietary firm and M/s VK Associates, a partnership firm, had been appointed as the Joint statutory auditors of PQR Ltd. for & consecutive years from 1.4.2021 to 31.3.2026. The shareholders had delegated the responsibility to fix the auditor's remuneration to the Managing Director, Mr. D. On 29.03.2023, there was a change in the constitution of M/s AT & Co. from proprietorship to a partnership. In light of the above facts and referring to the provisions of the Companies Act, 2013, answer each of the following questions:

(i) Does the Company have the authority to delegate the power to the Managing Director to fix the remuneration of the statutory auditors?

(ii) Whether annual ratification necessary since the auditor is appointed for a consecutive term of 5 years?

(iii) Whether a revised ADT-1 Form is required to be filed with the details of the new firm, M/s AT & Co. after the change in its constitution? [MTP-Sep 25]

Ans. (i) As per section 142(1) of the Companies Act, 2013, the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as the general meeting may determine.

Accordingly, the shareholders, through a resolution in the general meeting, may delegate the authority to fix the auditor's remuneration to the Managing Director or any other person, provided this is done in accordance with the prescribed procedures under the Act.

(ii) Under the Companies Act, 2013, there is no requirement for shareholders to ratify the appointment of auditors at every Annual General Meeting.

(iii) In case the change in the constitution of the firm (in this case M/s AT & Co.) is taking place, the company shall treat it like an appointment of a new auditor and accordingly file the ADT-1 Form after the conclusion of the (forthcoming) AGM to be held for the year 31.03.2023.

- Q33. Mr. Rock and Amaan are partners in a Chartered Accountant's firm. Their firm has been appointed as the statutory auditor of a company. The accounts manager of the company obtained the signatures from the Directors, CFO, and CEO on the board reports, financial statements and other documents and submitted them to the statutory auditor for the audit. The audit was conducted by a team led by Mr. Rock, while Mr. Amaan signed the auditor's report on behalf of the firm. Referring the provisions contained in the Companies Act, 2013, answer each of the following:
- (i) Has the Board complied with the relevant provisions?
(ii) Can Mr. Amaan sign the audit report in this case? [MTP-Sep 25]

Ans. (i) As per section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, for submission to the auditor for his report thereon.

The pre-requisite conditions under section 134(1) of the Companies Act, 2013, is that the financial statements shall be approved by the Board of Directors before they are signed on behalf of the Board for submission to the auditor for his report thereon. In this case, there is no approval obtained in a board meeting, and merely signing the financial statements is held to be invalid under the provisions of the Companies Act, 2013.

(ii) Section 141 of the Companies Act, 2013 outlines the eligibility, qualifications and disqualifications of auditors. It specifies that only a Chartered Accountants in practice can be appointed as an auditor of a company. When a firm is appointed as the auditor, it is the authorised partners who are also Chartered Accountants who can sign on behalf of the firm. So, Mr. Amaan, a CA and a partner in the firm, can sign the audit report.

- Q34. In the light of the provisions of the Companies Act, 2013 explain whether the following Companies can be considered as a 'Foreign Company':
- (i) A Company which has no place of business established in India yet is doing online business through telemarketing in India.
(ii) A Company which is incorporated outside India employs agents in India but has no place of business in India.

(iii) A Company incorporated outside India having shareholders who are all Indian citizens.

OR

[PYQ-Nov 18]

Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain. [RTP-Sep 24]

Ans. According to section 2(42) of the Companies Act, 2013, "foreign company" means any company or body corporate incorporated outside India which:

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

According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to -

- (i) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;
- (iii) financial settlements, web-based marketing, advisory and transactional services, data base services and products, supply chain management;
- (iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (v) all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise

In the light of the said provisions of the Companies Act, 2013, as enumerated above:

- (i) A company which has no place of business in India but is doing online business through telemarketing in India, will be considered as a 'Foreign Company'.
 - (ii) A company incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode, will be considered as foreign company.
- Thus, a company incorporated outside India which does not have a place of business in India, will not be considered a 'Foreign Company'

Q35. A company incorporated in France, with limited liability, established an office in Baroda, and started conducting business activity from its place of business. In compliance of Section 382 of the Companies Act, 2013, it conspicuously exhibited a name board outside its office, with the name of the company in English in big block letters. In three days, the company received a notice from the Registrar stating that it had not properly complied with the requirements of Section 382 of the Companies Act, 2013.

Mention the areas of lapses of the foreign company, which would be mentioned in the notice.
[MTP-Nov 22]

- Ans. According to Section 382 of the Companies Act, 2013,
- Every foreign company shall **conspicuously exhibit** on the outside of **every office or place** where it carries on **business in India**, the **name of the company** and the **country in which it is incorporated**, in **letters easily legible in English characters**, and also in the **characters of the language or one of the languages in general use in the locality** in which the office or place is situate
 - If the **liability of the members of the company is limited**, cause notice of that fact:
 - (i) to be **stated in every such prospectus** issued and in all business letters, bill -heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters and
 - (ii) to be **conspicuously exhibited on the outside of every office or place** where it carries on **business in India**, in legible **English characters** and also in **legible characters of the language or one of the languages in general use in the locality** in which the **office or place is situated**.

After taking into account the provisions of Section 382 of the Companies Act, 2013, the following are the lapses by the company:

- (i) The company has exhibited the name of the company in English but it has not displayed the name of the country where it was incorporated. Further, it has not displayed both the facts in the local language or one of the languages in general use in the locality in which the office or place is situated, i.e., Baroda.
- (ii) Further the company is one where the liability of members is limited. The fact that the members liability is limited has not been conspicuously exhibited on the outside of every office or place i.e., in Baroda, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality i.e., Baroda.

The above lapses would have given rise to the notice from the Registrar.

Q36. Black Star Inc. is a company incorporated in USA, four years back and has no established place of business in India. The company has entered into following contracts:

Particulars	Contracts entered in the ordinary course of business	Material Contracts
F.Y. 2017-18	4	2
F.Y. 2018-19	6	1
F.Y. 2019-20	5	3
F.Y. 2020-21	3	4

Apart from above, one contract has been entered into with its manager. The company intended to offer its securities in India. For that purpose, the secretary of the company, Mr. Berry Christian prepared the prospectus along with annexing the required documents and got it registered. Expert's consent was issued in a separate statement, the reference of which was given in the prospectus.

Few application forms for securities of Black Star Inc. were issued to prospective investors without the prospectus out of which one such form was issued in connection with bona fide invitation to the person to enter into an underwriting agreement with respect to securities of Black Star Inc.

In the context of aforesaid case, please answer to the following questions: -

- (i) Whether the expert's statement can be considered to be included in the prospectus?
- (ii) What copy of contracts would have been annexed with the prospectus by Mr. Berry?
- (iii) Whether it is valid on the part of Black Star Inc. for issuing few application forms without prospectus?

[RTP-May 22]

Ans. (i) According to section 388(2) of the Companies Act, 2013, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

In the given case, the reference of expert's consent statement was given in the prospectus. Thus, the expert's statement shall be deemed to be included in a prospectus.

(ii) According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, inter-alia, namely: -

- (a) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (b) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years.

In the given case, during the preceding 2 years, i.e., F.Y. 2019 -20 and F.Y. 2020-21, respectively, the material contracts entered into by Black Star Inc. are 3 + 4 = 7 and apart from it, one contract has been entered into with its manager. So, in total 8 copies of contracts would have been annexed with the prospectus by Mr. Berry.

(iii) According to section 387(3) of the Companies Act, 2013, no person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in section 387(1), unless the form is issued with a prospectus which complies with the provisions of this Chapter (Chapter XXII) and such issue does not contravene the provisions of section 388.

Exception: If it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities.

Black Star Inc. has, thus, violated provisions of section 387(3) by issuing few application forms without prospectus. However, the application form issued in connection with bona fide invitation to

the person to enter into an underwriting agreement with respect to securities of Black Star Inc. can be considered as valid as such a case is covered by the exception to the said sub-section.

- Q37. Phil Heath Systems Incorporated (PHSI), is a foreign Company registered in Australia and has established a place of business in India. The financial statements pertaining to the Indian business operations for the year ended 31st March, 2020 were prepared by the Company. Referring to the provisions of the Companies Act, 2013, advise the Company on the following matters:
- Whether the accounts of the Company pertaining to Indian business operations shall be audited? If yes, by whom?
 - What is the due date for filing the audited financial statements with the Registrar of Companies (ROC)?
 - What is the effect of the contracts entered by an Indian Company with PHSI in case PHSI has not filed financial statements with the RoC?
 - In which e-form and within what period, the annual return of the Indian operations of the foreign company shall be filed with the Registrar of Companies? [PYQ-Jan 21]

Ans. Phil Health Systems Incorporated (PHSI), a foreign company, is registered outside India and has a place of business in India. As it has prepared financial statements pertaining to the Indian business operations, it reflects conducts of business activity in India. Therefore, provisions related to companies incorporated outside India shall be applicable to it.

Following are the answer in line with said nature of the company:

- According to the Companies (Registration of Foreign Companies) Rules, 2014, PHSI shall get its accounts, pertaining to the Indian business operations, audited by a practicing Chartered Accountant in India or a Firm or Limited Liability Partnership of practicing Chartered Accountants.
- The audited financial statements of Indian business operations of PHSI shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate i.e., latest by 30th September 2020.
Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months i.e., latest by 31st December 2020.
- According to Section 393 of the Companies Act, 2013, any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013 (chapter XXII deals with 'Companies incorporated Outside India'), shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof.

In the instant case, non-filing of financial statements by PHSI shall not invalidate the contracts entered by Indian companies with PHSI.

However, PHSI shall not be entitled to bring in any suit, claim any set off, make any counter claim or institute any legal proceeding in respect of any such contract until the company has filed the financial statements.

- (iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare and file an annual return in Form FC-4 along with prescribed fees, within a period of 60 days from the last day of its financial year i.e., by 30th May 2020, to the Registrar containing the particulars as they stood on the close of the financial year.

Q38. Tokyo Ferro Alloys Limited, a company registered in Japan, started its operations in India by establishing a Marketing Division in Mumbai on 1st April, 2021. Recently, the Company decided to issue certain securities in India and therefore, is planning to circulate in India, a prospectus offering for subscription in securities of the Company. Assuming that all the other formalities in this respect have been complied with, advise the person in-charge of Indian operations regarding the other documents required to be annexed to the prospectus in order to registered the same, referring to the relevant provisions of the Companies Act, 2013 and the rules made thereunder.

[PYQ-Nov 21]

Ans. According to this Section 389 of the Companies Act, 2013 read with Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014,

The Following documents shall be annexed to the prospectus, namely:

- (i) any consent to the issue of the prospectus required from any person as an expert
- (ii) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof
- (iii) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years
- (iv) A copy of underwriting agreement and
- (v) A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

Accordingly, the person in charge of the Indian operations shall be advised in accordance with the above provisions.

Q39. RFC Limited has been incorporated in Singapore and has a business place in Mumbai. The company has issued 5,00,000 shares of USD 100 each, consisting of 4,00,000 equity shares and 1,00,000 preference shares. The issued share capital is fully paid up except 5,000 preference shares where USD 50 per share is unpaid.

RJW, an Indian citizen is holding 26,000 preference shares which include 1100 partly paid- up shares and Ronte Limited incorporated in New-Delhi (India) is holding 2,23,500 equity shares in RFC Limited.

The Registrar of Companies issued notice under Section 379 of the Companies Act, 2013 addressed to the person whose name and address has been delivered to the Registrar by RFC Limited for compliance under the Companies Act, 2013 for foreign companies.

The above notice was Delivered at the address which was given by RFC Limited to the Registrar of Companies. Answer the following, referring to the provisions of the Companies Act, 2013:

- (i) Whether RFC Limited is a foreign company?
- (ii) Whether service of notice by the Registrar of companies is valid? [PYQ-May 22]

Ans. (i) Whether RFC Limited is a Foreign Company?

As per Section 2(42) of the Companies Act, 2013, "Foreign Company" means any company or body corporate incorporated outside India which has a **place of business** in India whether by **itself or through an agent, physically or through electronic mode**; and **conducts any business activity** in India.

Provision of Section 379(2)- Requirement of holding of paid-up share capital of Foreign Company:
Further, in the light of the inputs given in the problem, 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 incorporated outside India is **held by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate**, such foreign company shall also comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. [Section 379(2)]

In the given case, RFC Limited, incorporated in Singapore has a business place in Mumbai. The Company has issued 5,00,000 shares of USD 100 each i.e., of USD 5,00,00,000 comprising of USD 4,00,00,000 equity share capital (i.e., 4 lac* USD 100) and USD 1,00,00,000 preference share capital (i.e. 1 lac * USD 100).

As the issued capital was fully paid up except 5,000 preferences shares (i.e., 5000* 50= USD 2,50,000), so, total paid up share capital of the RFC limited is:

Equity Share Capital-	USD 4,00,00,000
Preference Share Capital (Fully Paid) -	USD 95,00,000
Preference Share Capital (Partly Paid)-	USD 2,50,000
Total Paid up Share Capital-	USD 4,97,50,000

As per facts, shareholding by RJW, an Indian citizen is USD 25,45,000 preference share capital (i.e. 26,000 shares *USD 100- 1100 shares * USD 50) and Ronte Limited incorporated in New-Delhi (India) is holding USD 2,23,50,000 equity share capital (i.e., 2,23,500 *USD 100) in RFC Limited. Aggregate shareholding is USD 2,48,95,000, As per requirement of Section 379(2), RJW, an Indian citizen and

Ronte Limited incorporated (an Indian Company) were holding more than 50% of the shareholding (i.e. 50%* USD 4,97,50,000 = 2,48,75,000) in RFC Limited.

Therefore, RFC Ltd. is not only a foreign company as per Section 2(42) but shall also be complying with the provisions of Chapter XXII and other provisions of this Act with regard to the business carried on by it in India, as if it were a company incorporated in India as per Section 397(2).

(ii) Whether service of notice by the ROC is valid?

Yes, service of notice by the Registrar of Companies is valid in the light of Section 383 of the Companies Act, 2013. According to the provision any process, notice, or other document required to be served on a foreign company, shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Q40. Swift Pharmaceuticals, a Company registered in Singapore, has started its business in India during the financial year 2016. The Company has submitted all the required documents with registrar within the due date. On March 1, 2023, Swift Pharmaceuticals has shifted its principal office in Singapore. Does the Company required to undertake any steps due to change in address of principal office. [ICAI Study Mat]

Ans. Section 380 (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees. Accordingly, Swift Pharmaceuticals is required to submit the full address of the new registered or principal office of the company by March 30, 2023.

Q41. Identify which among the following companies can be categorized as foreign companies:

[RTP-Jan 26]

Case	Incorporated	Registered	Additional Condition
1	Malaysia	Malaysia	Developed patient's database for a hospital in India. Server in Malaysia
2	Dubai	Dubai	No Place of business in India but employs agents in India
3	California	California	Board meetings held in India
4	Australia	Australia	59% of the shareholding held by an India company

5	Washington	Washington	Offers A invites deposits from citizens of India but has no place of business In India
6	Germany	Germany	49% of the shareholding held by an Indian Company

Ans. According to Section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which:

- (a) Has a place of business in India whether by itself or through an agent physically or through electronic mode A
- (b) Conducts any business activity in India in any other manner

For the purposes of clause (42) of section 2 of the Act," electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to:

- (i) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (iii) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- (iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (v) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

Section 379(2) of the Companies Act, 2013, provides that where not less than fifty per cent 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 companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

Based on the above provisions, ana analyzing each case as below

Case	Incorporated	Registered	Additional Condition	Reasons
1	Malaysia	Malaysia	Developed patient's database for a hospital in India,	Though incorporated outside India, it is involved in transacting business in India and having place of Business through electronic

			Server in Malaysia	mode. Hence it is a foreign company.
2	Dubai	Dubai	No Place of business in India but employs agents in India	Since the company, though employed agent in India, but have no place of business in India. Hence not a foreign company.
3	California	California	Board meetings held in India	Mere holding of meetings in India cannot be termed as conducting business activity in India. Hence not a foreign company.
4	Australia	Australia	59% of the shareholding held by an Indian company	As per the provisions, if not less than 50% of shareholding of a foreign company is held by Indian citizens. It is treated as an Indian Company. Hence this is not a foreign company.
5	Washington	Washington	Offers & invite deposits from citizens of India but has no place of business India	This is one of the ways of transacting business through electronic modes. However, this company doesn't have a place of business in India. Hence it cannot be called as a Foreign Company
6	Germany	Germany	49% of the shareholding held by an Indian Company	As per the provisions, if not less than 50% of shareholding of a foreign company is held by Indian citizens, it is treated as an Indian Company. Here only 49% is held by Indian company. Hence this is a foreign company.