

MOST IMPORTANT QUESTIONS FOR CA INTER CORPORATE & OTHER LAWS

CHAPTER 1 – PRELIMINARY

Five Star	Four Star	3 Star	2 Star
✓ Small co	✓ Private company	✓ Listed Company	✓ Related Party ✓ Foreign Company

Important sections

- ✓ Section 2 (68) - Private Company
- ✓ Section 2 (85) - Small Company
- ✓ Section 2 (40) - Financial Statement
- ✓ Section 2 (76) - Related Party
- ✓ Section 2 (52) - Listed Company
- ✓ Section 2 (42) - Foreign Company

Private Company

Question 1

Jagannath Oils Limited is a public company and having 220 members of which 25 members were employee in the company during the period 1st April, 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July, 2007 which were sold by them 1st August, 2016. After some time, on 1st December, 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. **State with reasons:**

- (I) Whether Jagannath Oils Limited is required to reduce the number of members.
- (II) Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April, 2006 to 28th June, 2017?

Answer

Private company [Section 2(68) of Companies Act, 2013]

“Private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, —

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to **two hundred:**

Provided that where **two or more persons** hold one or more shares in a company **jointly**, they shall, for the purposes of this clause, be treated as a **single member:**

Provided further that—

(A) **persons** who are **in the employment** of the company; and

(B) **persons** who, having been **formerly in the employment** of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall **not be included in the number of members;** and

(iii) **prohibits** any invitation to the public to subscribe for any securities of the company.

(I) Following the provisions of Section 2(68), 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e. after the date on

which these 25 members were ceased to the employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members. The company is required to reduce the number of members before converting it into a private company.

(II) On the other hand, if those 25 members were ceased to be employee on 28th June 2017, they were employee at the time of getting present membership. Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this sub-section will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company.

Small Company | Financial Statement | Cash Flow

Question 2A

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a Paid-Up Share Capital of Rs. 45 lakh and turnover of Rs. 3 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act 2013:

- (i) Whether the MNP Private Ltd. can avail the status of small company?
- (ii) What will be your answer if the turnover of the company is Rs. 1.5 crore?

Answer

MNP Private Ltd. is a small company:

since the company satisfies the condition with respect to 'paid up capital not exceeding Rs. 4 crores' as well as the condition with respect to 'turnover not exceeding Rs. 40 crores'.

If the turnover of MNP Private Ltd. is Rs. 1.5 crore: even then, the answer shall remain same.

Question 2B

Geeta Private Limited is a start-up company. Mr. Prabodh has been appointed as Accounts Manager of Geeta Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2022 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Prabodh about the statements that are required to be prepared.

Answer

Exemption: As per the proviso to section 2(40), the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

In the instant case, Mr. Prabodh has to prepare the above financial statements except Cash Flow Statement; since Geeta Private Limited is a start-up private company

Question 2C

Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors.

Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of Rs. 1.5 crore with 40 members and turnover of Rs. 18 crore, respectively and the said company is not a start-up company.

In the context of aforesaid case-scenario, please answer to the following question(s): -
Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?

Provide your answer by analyzing Sankul (P) Ltd. into following category of companies: -

(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively.

Answer

According to section 2(40) of the Companies Act, 2013, Financial statement in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub- clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to

- one person company,
- small company,
- dormant company and
- private company (if such private company is a start-up)

may not include the cash flow statement.

For considering the applicability of preparation cash flow statement in case of Sankul (P) Ltd., it is required first to be analyzed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013:

(i) **One person company** – It is given that the company is having 40 members and also its name does not contain the words ‘OPC’, so it is not a one person company.

(ii) **Small company** – A company which is a subsidiary company cannot be categorized as a small company as per proviso to section 2(85) even though its paid up capital and turnover are within the prescribed limits and accordingly, as Sankul (P) Ltd. is a subsidiary company of Hastprat Ltd., it cannot be considered as small company also.

(iii) **Dormant company** – It is given that the company is actively carrying on its business, so it cannot be also categorized as a dormant company based upon the facts given.

(iv) **Private company (which is a start-up)** – It is given that Sankul (P) Ltd. is not a start- up company and also, as per proviso to section 2(71) of the Act, a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

So, Sankul (P) Ltd. shall be deemed to be a public company as it is subsidiary of Hastprat Ltd., an unlisted public company and so it will not fall into this category of exemption as well.

Listed Company

Question 3A

Referring the relevant provisions of the Companies Act, 2013, examine, whether following companies will be considered as listed company or unlisted company:

- (i) ABC Limited, a public company, has listed its non-convertible Debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
- (ii) CHG Limited, a public company, has listed its non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
- (iii) PRS Limited, a public company, which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Companies Act, 2013.

Answer

According to **Section 2(52)** of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange.

RULE 2A: According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely: -

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

(b) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

In view of the above provisions of the Act:

- (i) ABC Limited is an unlisted company.
- (ii) CHG Limited is an unlisted company.
- (iii) PRS Limited is an unlisted company.

Question 3B

Following are some of the securities, issued by different companies related with each other, as follows: -

Company	Securities Issued	Remarks
Kleshrahit Ltd.	Listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations.	Has the power to appoint 2/3rd directors in Indriyadaman Ltd.
Indriyadaman Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	Holding 60% voting power in Sajagta (P) Ltd.
Sajagta (P) Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	The company holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee.

Equity shares issued by the Kleshrahit Ltd. and Indriyadaman Ltd. are not listed in any of the recognized stock exchanges.

In the context of aforesaid facts, answer the following question(s): -

- (a) Whether the aforesaid companies can be considered as listed company(ies)?
- (b) Explain the relationship between the aforesaid companies?

Answer

According to **section 2(52)** of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange;

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

According to **rule 2A** of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely: -

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.	
Company Name	Analysis and Conclusion
Kleshrahit Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(ii) to Rule 2A, as aforesaid, and accordingly, Kleshrahit Ltd. shall not be considered as a listed company.
Indriyadaman Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(i) to Rule 2A, as aforesaid, and accordingly, Indriyadaman Ltd. shall not be considered as a listed company.
Sajagta (P) Ltd.	The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta (P) Ltd. shall not be considered as a listed company.

Related Party

Question 4

ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013?

Answer

According to section 2(76)(viii) of the Companies Act, 2013, Related party, with reference to a company, means any body corporate which is -

- (A) a holding, subsidiary or an associate company of such company;
- (B) a subsidiary of a holding company to which it is also a subsidiary; or
- (C) an investing company or the venturer of the company;

In the given question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd.

According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

Foreign Company & Financial Year

Question 5A

(i) Herry Limited is a company registered in Thailand. It has no place of business established in India, yet it is doing online business through telemarketing in India having its main server for online business outside India. State the status of the Company under the provisions of the Companies Act, 2013.

(ii) SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.

Answer

(i) 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.

Herry Ltd, has a place of business in India

Herry Limited will be treated as foreign company.

“electronic mode” means carrying out electronically, whether main server is installed in India or not.

(ii) ‘Financial year,’ in relation to any company or body corporate, means the **period ending on the 31st day of March every year**, and

where it has been incorporated **on or after the 1st day of January of a year**, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

SKP Limited is advised to follow the above procedure accordingly.

Question 5B

Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company.

Answer

Teresa Ltd, has a place of business in India

Teresa Ltd. is a foreign company since electronic mode includes providing online services through data exchange;

- since a company incorporated outside India which has a place of business in India through electronic mode is a foreign company if it conducts any business activity in India.