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## CA INTERMEDIATE: GROUP – I

### PAPER – 2: CORPORATE AND OTHER LAWS

#### Answer To Part – I Case Scenario Based MCQS

Question No.	Reason
1.	<b>b</b> Because Rachna became incapable of contracting, Ravi (her nominee) became the member of OPC-2. As the new member, Ravi has the right to nominate a new nominee.
2.	<b>b</b> Rule 3(5) of the Companies (Incorporation) Rules, 2014 specifically prohibits the conversion of a One Person Company (OPC) into a Section 8 company.
3.	<b>d</b> Ravi became a member of a second OPC on April 2, 2020. He has 180 days to comply with the rule of being a member of only one OPC. 180 days from April 2, 2020, is September 29, 2020.
4.	<b>a</b> Since Rachna has become incapable of contracting (insane), she can no longer serve as the nominee for OPC-1. A nominee must be a person capable of entering into contracts. Therefore, Ravi is required to nominate another person as the nominee for OPC-1.
5.	<b>b</b> The key point is that the <i>member</i> of the OPC has the sole discretion to choose the nominee. A will, or any other external document, cannot override this right granted by the Companies Act. Therefore, Suresh cannot legally challenge Ravi's decision, as the nomination is entirely up to Ravi as the member of OPC-1.
6.	<b>c</b> The scenario explicitly states that the Tribunal found the merger scheme was "designed for the reconstruction and amalgamation of Shiksha LLP and Dwar LLP." This directly indicates the main purpose.
7.	<b>C</b> The Tribunal can supervise, modify, and give directions for a compromise or arrangement sanctioned under Section 60 of the LLP Act.
8.	<b>b</b> Failure to file the Tribunal's order with the Registrar within 30 days results in a fine for the LLP and its designated partners, with additional penalties for continued non-compliance.
9.	<b>b</b> Kartik Electronics <i>could</i> be an LLP partner. Though the LLP Act initially referenced the repealed Companies Act 1956, Section 8 of the General Clauses Act 1897 mandates that references to repealed provisions be read as references to the re-enacted ones (Companies Act 2013).
10.	<b>a</b> LLP Act requires notifying the registrar of a new partner within 30 days of admission. Shanaya was admitted on Jan 17; therefore, the deadline is Feb 16. Since the options ask for the <i>latest</i> date to inform, and the firm already informed the registrar on Jan 31, any date <i>up to and including</i> Feb 16 is valid.
11.	<b>c</b> Shanaya ceases to be a partner. Though LLP Act Section 24(2) uses "he," the General Clauses Act mandates that masculine pronouns include females in legal contexts, unless otherwise specified. Therefore, being declared of unsound mind by a court disqualifies her as a partner.
12.	<b>d</b> A foreign company establishing a place of business in India must submit a declaration from <i>all</i> its directors and the secretary stating they haven't been convicted or debarred from forming companies. Therefore, declarations are required from Mr. A, Mr. R, Mr. M, Mr. N, and Ms. Lia.

13.	d	Because the sale is a domestic transaction (buyer is a "Person Resident in India" under FEMA), remitting the commission in USD to a non-resident broker (M/s. Super Seller) requires prior RBI approval for the full amount of USD 42,000.
14.	a	Though the company is primarily responsible for charge registration, the bank (charge-holder) can register it and recover the associated fees from the company due to the company's default. No RD/NCLT orders are required for this recovery.
15.	a	Rule of Literal Construction. It interprets statutes based on the ordinary, natural, and grammatical meaning of words.

## Answers Of Part – II Descriptive Questions

Q.1

(a) According to proviso to **section 68(2)** of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

**Section 68 (8)** casts an obligation that where a company completes a buy -back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under **section 62 (1) (a)** or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Keeping in view of the above provisions, the statement "the offer of buy -back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions" is not valid.

(b) In the given case, Abhay Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Therefore, Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 will be applied.

**According to the said rule, the required conditions are:**

**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 three years immediately preceding that year. Since the company has not declared any dividend in the preceding three financial years, hence condition I is not applicable in this case.

**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.

Paid-up capital + Free reserves = ₹ (100+150) Lakhs (General reserves are free reserves) = ₹250 Lakhs

10% thereof = ₹25 Lakhs

**Condition III:** The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

The amount drawn as stated above = ₹25 Lakhs

Less: loss for the financial year 2019-2020 = ₹20 Lakhs

**Amount available = ₹5 Lakhs**

Hence, the quantum of dividend is further restricted to ₹5 lakhs.

**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.

Accumulated Reserves ₹150 Lakhs

Proposed withdrawal declaration of dividend ₹5 Lakhs

### Balance of Reserves

This is more than 15% of paid-up capital (i.e. 15% of ₹100 Lakhs) i.e.

Thus, the company can declare a dividend of ₹5 lakhs.

Hence, by following above provisions, Abhay Limited is allowed to declare dividend for the FY 2019-2020 and the maximum amount of dividend that can be paid is ₹5 Lakhs.

(c) According to section 2(v) of the Foreign Exchange Management Act, 1999, "Person resident in India" means a person residing in India for more than 182 days during the course of the preceding financial year but does not include a person who has gone out of India or who stays outside India, for or on taking up employment besides with the other specified purposes, outside India.

(i) In the given question, Ms. Lia will be treated as a person resident outside from 2.4.2024 till the time he works in Zudio Fashion Ltd. in Paris, as he has gone out of India for or on taking up employment outside India. His return to India for 10 days to attend a family function, will not alter his residential status.

(ii) Ms. Lia will be treated as a person resident in India from the day he joins employment in India (after arriving on 30.4.2024).

### Q2

(a) According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following category of receipt is not considered as deposit:

Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money or advance towards allotment of securities, pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

In the given question, Mivi Limited has received & ₹50 Lakh as share application money on 01.06.2023. It failed to allot shares within the prescribed limit. Further, on 30.07.2023 the company adjusted the amount of ₹25 Lakh received from Dolby (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

**In the light of the facts of the question and provisions of Law:**

(1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 6 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2023 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of Mivi Limited is not correct in treating the entire amount of ₹50 Lakh as 'Deposits' on 31.07.2023.

(2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of & ₹5 Lakh adjusted against payment due to be received from Dolby, cannot be treated as refund.

**(b) Relevant Provisions:** 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 subclause (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 analysed 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 has 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 it's paid-up capital and turnover are within the prescribed limits and accordingly as Sankul (P) Ltd. is a subsidiary company of H&M Ltd. it cannot be considered as a 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 startup 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.

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

Thus, it can be concluded that Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements as it does not fall in any of the categories of companies mentioned under proviso to **section 2(10)** of the Companies Act, 2013.

**(c) Immovable Property'** [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:

(i) Land

(ii) Benefits to arise out of land, and

(iii) Things attached to the earth, or

(iv) Permanently fastened to anything attached to the earth. It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

**Q3**

**(a)** This given problem is based on sub-clause (87) of Clause 2 read with **section 19** of the Companies Act, 2013.

As per sub-clause (87) of Clause 2 of the Companies Act, 2013 "subsidiary company" or "subsidiary", in relation to any other company (i.e., the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

Whereas **Section 19** provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that nothing in this sub-section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Here in the instant case, Apollo Ltd. issued 10,000 equity shares on 1.4.2024 whereby XPro Ltd. & Pix Ltd. holds 4000 & 2000 shares respectively in Apollo Ltd., Considering 1 share = 1 vote, XPro Ltd. and Pix Ltd. together holds more than one-half (50%) of the total voting power. Therefore, Apollo Ltd. will be subsidiary to XPro Ltd. & Pix Ltd. from 1.4.2024.

Whereas Apollo Ltd. is already holding 20% equity shares of Revout Ltd. before the date of issue of equity shares i.e. 1.4.2024. Further, Revout Ltd. controls the composition of Board of Directors of XPro Ltd. and Pix Ltd. from 01.08.2024. In the light of sub-clause (87) of Clause 2, Revout Ltd. is a holding company of XPro Ltd. and Pix Ltd. (Subsidiary companies).

#### **Following are the answers to the questions:**

(i) Yes. In this case Apollo Ltd. shall be deemed to be a subsidiary company of the holding company (Revout Ltd.) as Revout Ltd. controls the composition of subsidiary companies XPro Ltd. & Pix Ltd. as per explanation to sub-clause (87) of Clause 2.

(ii) Yes. In this case Apollo Limited is a subsidiary of Revout Limited as Apollo Ltd. was holding 20% of equity shares of Revout Ltd. even before it became a subsidiary company of the Revout Ltd. (i.e., on 01.08.2024), according to the exception to **section 19**.

(iii) No. The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore, Apollo Ltd. cannot vote at AGM of Revout Ltd. held on 30.9.2024.

(b) A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf in his absence. As per the provisions of **Section 105** of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted. Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permissible time.

However, in the case of Member W, the proxy M (and not Proxy N) would be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

#### **(c) Rule of Literal Construction**

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

This principle is contained in the Latin maxim "absoluta sententia expositore non-indigent" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.

Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in **section 102** of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon.

What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Vivian (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal. Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

#### Q.4

(a) (i) As per **section 140(4)** of the Companies Act, 2013, resolution for appointment of an auditor other than the 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 five lakh rupees, as may be prescribed, has been paid up.

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, Adidev Ltd. is having 1,000 members with paid-up capital of 1 crore, and it received a notice from its 60 members holding paid-up capital of 7 lakhs, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than 5 lakhs 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 August, 2022, and the 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 Adidev Ltd.

(ii) As per **Section 140(4)** of the Companies Act, 2013: Where notice is given of a resolution appointing as auditor a person other than a retiring auditor 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, unless the representation is received by it too late for it to do so,—

(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.

However, in the present case, Adidev Ltd. received the representation made by Chatresh & Co. too late and accordingly it was not bound to send such representation to its members even though it was requested by Chatresh & Co. to do so.

Further, as per **Section 140(4)** of the Companies Act, 2013, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting such a copy of representation thereof shall be filed with the Registrar.

Accordingly, Adidev Ltd, apart from giving to right to be heard orally to Chatresh & Co. shall also made the representation read out at the AGM, if so, required by Chatresh & Co, and shall also file such representation with the Registrar, respectively.

**(b) (i) Essential elements to incorporate LLP** - Under the LLP Act, 2008, the following elements are very essential to form an LLP in India:

(i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
(ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
(iii) To have registered office in India to which all communications will be made and received;
(iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India.
(v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
(vi) To execute a partnership agreement between the partners, inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
(vii) LLP Name.

**(ii) Distinction between LLP and Partnership Firm:** The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

Basis	LLP	Partnership firm
<b>Regulating Act</b>	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
<b>Body corporate</b>	It is a body corporate.	It is not a body corporate,
<b>Separate legal entity</b>	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
<b>Creation</b>	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
<b>Registration</b>	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
<b>Perpetual succession</b>	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
<b>Name</b>	Name of the LLP to contain the word limited liability partners (LLP) as suffix	No guidelines. The partners can have any name as per their choice

<b>Liability</b>	Liability of each partner limited to the extent to agreed contribution except in case of wilful fraud	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners
<b>Mutual agency</b>	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
<b>Designated partners</b>	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Indian partnership Act, 1932.
<b>Common seal</b>	It may have its common seal as its official signatures.	There is no such concept in partnership
<b>Legal compliances</b>	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act
<b>Annual filing of documents</b>	<b>LLP is required to file:</b> (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
<b>Foreign partnership</b>	Foreign nationals can become a partner in an LLP.	Foreign nationals cannot become a partner in a partnership firm.
<b>Minor as partner</b>	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners

(c) Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form.

**If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:**

- the nature of the thing empowered to be done,
- the object for which it is done, and
- the person for whose benefit the power is to be exercised.

**Q5**

(a) According to **section 92 (4)** of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

**Sub-section (5) of Section 92** also states that if any company fails to file its annual return under **sub-section (4)**, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the opinion of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is not correct.

In the above case, the annual general meeting of Smart Mart Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of **section 92** of the Companies Act, 2013 for not filing the annual and shall attract the penal provisions along with every officer of the company who is in default as specified in **Section 92 (5)** of the Act.

(b) As per **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.

Whereas **section 139(1)** of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.

As per **section 139(2)**, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

**As per the given provisions following are the answers:**

(i) Appointment of Mr. Chamkila by the Board of Directors is valid as per the provisions of **section 139(6)**.  
(ii) Appointment of Mr. Chamkila at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Chamkila is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

(c) **“Good Faith” [Section 3(22) of the General Clauses Act, 1897]:** A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not;  
The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term “Good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

**Q.6**

(a) According to the doctrine of indoor management, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly.

They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

**Thus,**

What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company but not know the information he/she is not privy to.

If not for the doctrine the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Mr. Dev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr. Dev. Thus, the company is bound to pay the loan.

OR

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

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members; the Central Government may, by issue of license, allow that person or association of persons to be registered as a limited liability company.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under **section 8** for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects.

Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in **sub-section (9) of Section 8** of the Companies Act, 2013. Therefore, the proposal is not feasible.

(b) According to **section 380 of the Companies Act, 2013 read with Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014**, following shall be the compliances duly required to be fulfilled by the CNC Limited, a foreign company, for closure of one of its branches of Mumbai office.

(i) **W.r.t. Compliance procedure as regards to amendment of Memorandum of Association**

According to **Section 380 (3)** of the Act which 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.

As in the instance, the CNC Limited has amended its Memorandum of Association on 1st of June 2022 and closed its branch office of Mumbai. This altered document is required to be delivered to Registrar by CNC Limited within 30 days i.e. latest by 1st of July 2022.

(ii) **W.r.t. compliance procedure as regards to closure of Mumbai office and discontinuing submission of documents to the registrar of companies afterwards**

If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and from the date on which such notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India. Here, in the given case, CNC Limited has still Ahmedabad as a place of business in India. So, will continue the submission of document to the Registrar even after the closure of Mumbai office.

(c) Toyota Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

The robotic unit headquartered in Jaipur, which is a person resident in India as discussed above, controls the Singapore branch, Hence, the Singapore branch is a 'person resident in India'.

