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Chapter 1: Preliminary

Study Material

Que 1: Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

a.	Directors & their relatives	50
b.	Employees	15
c.	Ex-Employees (shares were allotted when they were employees)	10
d.	5 couple holding shares jointly in the name of husband & wife (5*2)	10
e.	Others	145

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

Ans. Relevant Provisions: According to **section 2(68)** of the Companies Act, 2013, "**Private company**" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, **except in case of One Person Company**, limits the number of its members to **two hundred**.

However, 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**.

It is **further** provided 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.

Fact of the Case: In the instant case, Flora Fauna Limited may be converted into a private company only if the total members of the company are limited to 200. Total Number of members

a.	Directors & their relatives	50
b.	5 couple holding shares jointly in the name of husband & wife (5*1)	5
e.	Others	145
Total		200

Conclusion: Therefore, there is no need for reduction in the number of members since the existing number of members is 200 which does not exceed the maximum limit of 200.

Rtp May 2018 / Past Paper May 2019

4 Marks

Que 2: The paid-up share capital of Saras Private Limited is Rs. 1 crore, consisting of 8 lacs Equity Shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs.10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?

Ans. Relevant Provisions: In terms of **section 2(87)** of the Companies Act 2013 "**subsidiary company**" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company:

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

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

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation: a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

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

Conclusion: In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total share capital. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.

However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

Past Paper Nov 2018**4 Marks**

Que 3: What does the term Financial Statements include in relation to a company under the Companies Act, 2013? Which companies need not prepare a cash flow statement?

Ans. 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 company) may **not include the cash flow statement**.

Study Material / Past Paper May 2018 / Mtp1 Nov 2021 / Mtp Nov 2020**6 Marks**

Que 4: MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹2 crore and turnover of ₹60 crore. 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 ` 30 crore?

Ans. Relevant Provisions: Small Company: According to **Section 2(85)** of the Companies Act, 2013, **Small Company** means a company, other than a public company,

- (1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Nothing in this clause shall apply to—

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

Explanation: As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of **section 2** of the Act, **paid up capital and turnover of the small company shall not exceed rupees four crores and rupees forty crores respectively.**

Conclusion: (i) In the present case, MNP Private Ltd, is a company registered under the Companies Act, 2013 with a paid-up share capital of ` 2 crore and having turnover of ` 60 crore. Since only one criteria of share capital not exceeding ` 4 crore is met, but the second criteria of turnover not exceeding ` 40 crore is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

(ii) If the turnover of the company is ` 30 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

Past Paper May 2022**3 Marks**

Que 5: 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 parties as per the provisions of the Companies Act, 2013?

Ans: According to **section 2(76)(viii)** of the Companies Act, 2013, **Related party**, with reference to a company, means anybody 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.

However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to **section 188** to a private company, though being a related party.

MTP1 Jan 2025

4 Marks

Que 6: MNO Limited are finalising its financial statements and found that the value of one of its properties has increased. The company came across certain other transactions also and got confused as to what should be included as 'free reserves'. The company has approached you to define to them the meaning of the term "free reserves" for dividend distribution as per the provisions of the Companies Act, 2013.

Ans: MNO Limited are finalising its financial statements and found that the value of one of its properties has increased. The company came across certain other transactions also and got confused as to what should be included as 'free reserves'. The company has approached you to define to them the meaning of the term "free reserves" for dividend distribution as per the provisions of the Companies Act, 2013.

MTP2 Jan 2025

4 Marks

Que 7: Nath Private Limited is a start-up company. Mr. P has been appointed as Accounts Manager of Nath Private Limited. The Board meeting for approval of accounts is to held be on 01.08.2024. For this he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. P about the statements that are required to be prepared.

Ans: As per 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):

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. P has to prepare the prescribed financial statements except Cash Flow Statement; since Nath Private Limited is a start-up private company.

RTP Jan 2025

Que 8: Vishal Limited is an unlisted public company, having five directors in its board which includes two independent directors. Sam (P) Limited, is subsidiary company of Vishal Limited, actively carrying on its business, having paid up capital of ` 15 crore with 40 members and turnover of ` 18 crore, respectively and the said company is not a start-up company. It is also provided that Sam (P) Limited is not a start up company. In the context of aforesaid case-scenario, please answer to the following question(s):-

Whether Sam (P) Limited is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?

Provide your answer by analyzing Sam (P) Limited into following category of companies:-

- (i) Small company, and
- (ii) Dormant company, respectively.

Ans: According to section 2(10) 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.

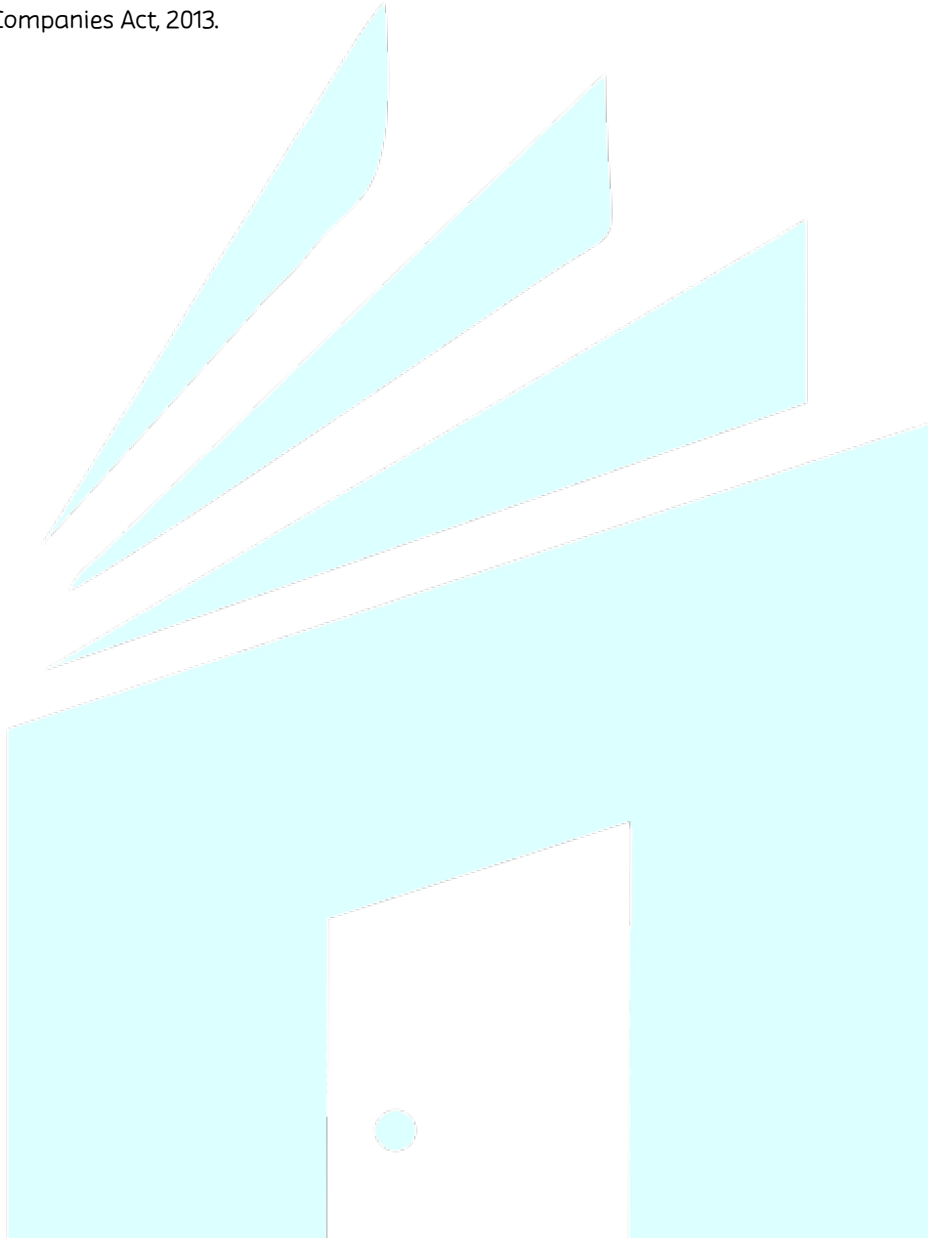
For considering the applicability of preparation of cash flow statement in case of Sam (P) Limited, it is required first to analyze that Sam (P) Limited does not fall in the following categories:

(i) Small company – A company which is a subsidiary company cannot be categorized as a small company as per proviso to section 2(85). Thus, even though its paid up capital and turnover are within the prescribed limits, as Sam (P) Limited is a subsidiary company of Vishal Limited, it cannot be considered as small company.

(ii) 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.

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

Thus, it can be concluded that Sam (P) Limited 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.



Chapter 2: Incorporation of Company Matters & Thereto

Mtp 1 Nov 2018, Rtp Nov 2019

6 Marks

Que 1: OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of Rs.30,000 per month, to buy 500 partly paid-up Equity Shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Ans: Restrictions on purchase by company or giving of loans by it for purchase of its share: As per **section 67 (3)** of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- The employee must not be a Key Managerial Personnel;
- The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
- The shares to be subscribed must be fully paid shares **Section 2 (51)** of the Companies Act, 2013 defines the "Key Managerial Personnel" (KMP) whereby a KMP includes the Chief Executive, Company Secretary, Whole Time Director, Chief Financial Officer, such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and such other officer as may be prescribed.

In the given instance, Human Resource Manager is not a KMP of the OLAF Ltd. He is drawing salary of Rs. 30, 000 per month and loan taken to buy 500 partly paid-up equity shares of Rs. 1000 each in OLAF Ltd.

Keeping the above provisions of law in mind, the company's (OLAF Ltd.) decision is invalid due to two reasons:

- The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to Rs. 1.8 Lakhs.
- The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

Mtp 1 May 2022, Mtp 2 Nov 2022

5 Marks

Que 2: Gully Gilli Danda Club was formed as a Limited Liability Company under section 8 of the Companies Act, 2013 with the object of promoting Gilli Danda by arranging introductory courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. A, a member decided to make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.

- Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.
- Whether the company may be wound up?
- Whether the Gully Gilli Danda Club can be merged with Stick Private Limited, a company engaged in the business of networking?

OR

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

- Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.
- Whether the Company may be wound up?
- Whether the P Cricket Club can be merged with Z Net Private Limited, a company engaged in the business of networking?

Ans:(i) According to **section 8(6) of the Companies Act, 2013**, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of **section 8** subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited'

or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. Hence, in the instant case, the Central Government can revoke the license given to Gully Gilli Danda Club as **section 8** company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under **section 8**.

(ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard. **[Section 8(7)]**. Hence, the stated company may be wound up.

(iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. **[Section 8(10)]** In the instant case, Gully Gilli Danda Club cannot be merged with Stick Private Limited as the objects of both the companies are different and not similar.

Study Material, Mtp 1 May 2021, Mtp 2 Nov 2021, Mtp 1 Nov 2022

5 Marks

Que 3: Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company.

Ans: Under **section 20** of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in cases where securities are held with a depository, the records of the beneficial ownership may be served by such depository to the company by means of electronic or other mode.

Under **section 20 (2)**, save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Mtp 1 May 2023, Past Paper July 2021

5 Marks

Que 4: Examine the validity of the following different decisions/proposals regarding change of office by A Limited under the provisions of the Companies Act, 2013:

(i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.

(ii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

Ans: Regarding the validity of Proposals w.r.t change of registered office by A Ltd. in the light of the **section 12 of the Companies Act, 2013**:

(i) In the first case, where the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e., Registrar of Mumbai. As per **Section 12 (5)** of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.

(ii) **Section 12** talks about shifting of registered office only, in the second case the corporate office is being shifted from Pune to Mumbai under the authority of Board resolution. Shifting of corporate office under the board resolution is valid.

[Note: It may be assumed that corporate office and registered office are same. Then in this case, registered office situated in Mumbai is changed from Mumbai to Pune falling the jurisdiction of different of ROCs in the same State.]

In line **section 12 (5) of the Act**, where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to be confirmed by the Regional Director on an application made by the company. Accordingly, the said proposal may be treated as invalid, due to lack of confirmation by regional director of such change.

(iii) In the third case, change of registered office within the local limits of the same city. Said proposal is valid in terms it has been passed under the authority of Board resolution.

Past Paper May 2019

4 Marks

Que 5: As at 31st March, 2018, the paid-up share capital of S Ltd. is ` 1,00,00,000 divided into 10,00,000 equity shares of ` 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

(i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?

(ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?

(iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

Ans: The paid-up share capital of S Ltd. is ` 1,00,00,000 divided into 10,00,000 equity shares of ` 10 each. Of this, H Ltd. is holding 6,00,000 equity shares.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of **section 2(87)** of the Companies Act, 2013.

In the instant case,

(i) As per the provisions of **sub-section (1) of Section 19** of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.

(ii) As per second proviso to **Section 19**, a 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. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.

(iii) **Section 19** also provides that 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. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

Mtp1 Jan 2025

4 Marks

Que 6: Explain the provisions of the Companies Act, 2013- who can get a licence to operate as a section 8 company (non-profit organization)?

Ans: As per section 8 of the Companies Act, 2013, the Central Government (ROC in its behalf) may grant a licence (to operate as a non-profit organisation) if it is proved to the satisfaction that a person or an association of persons proposed to be registered under the Companies Act, 2013, as a limited company:

- 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;
- intends to apply its profits (if any) or other income in promoting its objects; and
- intends to prohibit payment of any dividend to its members.

Mtp2 Jan 2025

4 Marks

Que 7: Trinity school started imparting education on 1st April, 2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition

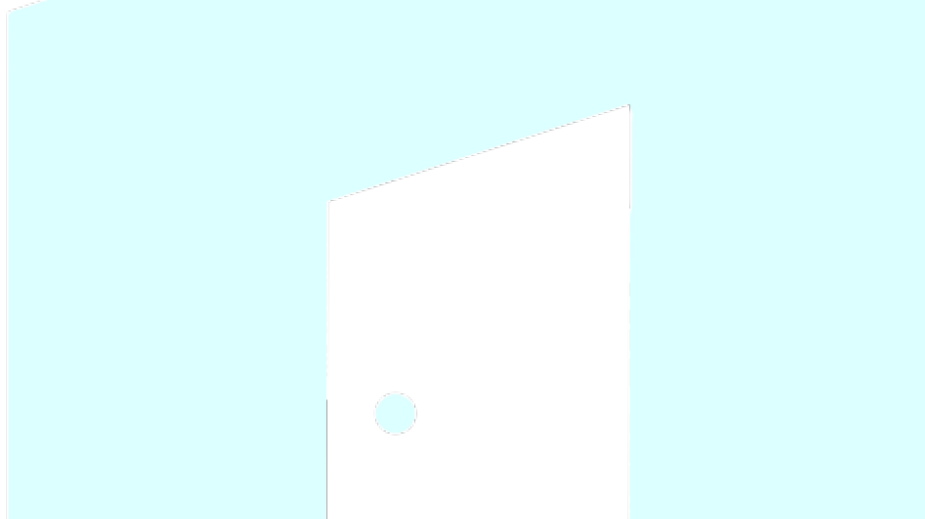
of their parents. However, on 30th March 2024, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Trinity school, in such a case?

Ans: Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Trinity school was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

(i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

(ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

(iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.



Chapter 3: Prospectus and Allotment of Securities

Study Material/ Mtp1 May 2021/ Mtp2 Nov 2022/ Past Paper Dec 2021

6 Marks

Que 1: PQR Bakers Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 55 persons, of which four are qualified institutional buyers and remaining are individuals. Before the completion of allotment of equity shares under this offer letter, the company issued another private placement offer letter to another 155 persons in their individual names for issue of its debentures.

Being a public company is it possible for PQR Bakers Limited to issue securities under a private placement offer? By doing so, whether the company is in compliance with provisions relating to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year?

Ans: According to **section 42** of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter

However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting the number of persons, Qualified Institutional Buyers (QIBS) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.

Further, **Rule 14 (2)** of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes **maximum of 200 persons** who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.

It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.

Also, a company is not permitted to make fresh offers under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of a different kind of security.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

In the given case PQR Bakers Limited, though a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given an offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies with the private placement provisions.

However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of the first offer and therefore, the second offer does not comply with the provisions of **section 42**. Hence, the offers given by the company will be treated as public offer.

In case the company gives an offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

Study Material

Que 2: How does the Companies Act, 2013 regulate and restrict the following matters in respect of a company going for public issue of shares:

- (i) Minimum Amount stated in the Prospectus; and
- (ii) Application Money payable on shares.

Ans: The Companies Act, 2013 by virtue of the provisions as contained in **Section 39 (1) and (2)** regulates and restricts the minimum amount stated in the prospectus and the application money payable in a public issue of shares as under:

Minimum amount stated in a prospectus. **No Allotment** shall be made of any securities of a company offered to the public for subscription; **unless**;

- (i) the amount stated in the prospectus as the minimum amount has been subscribed; and
- (ii) the sums payable on application for such an amount has been paid to and received by the company.

Application money

Section 39 (2) provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations on this behalf.

Further **section 39 (3)** provides that if the stated minimum amount is not received by the company within 30 days of the date of issue of the prospectus or such time as prescribed by SEBI, the company will be required to refund the application money received within such time and manner as may be prescribed.

Rule 11 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 mentions that if the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum.

In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

MTP May 2018

6 Marks

Que 3: With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X received copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares through the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013 examine whether X's claim for damages is justified.

Ans- Under **section 2 (70)** of the Companies Act, 2013, "**prospectus**" means any document described or issued as a prospectus and includes a red herring prospectus referred to in **section 32** or shelf prospectus referred to in **section 31** or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

A prospectus is a document inviting offers from the public. The prospectus and any statement therein have no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.

Since, X purchased shares through the stock exchange (open market) which cannot be said to have bought shares on the basis of prospectus. X cannot bring action for deceit against the directors. Hence, X will not succeed. It was also held in the case of Peek Vs. Gurney that the above-mentioned remedy by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus.

MTP May 2018/ MTP Nov 2019/ MTP1 May 2021

7 Marks

Que 4: An allottee of shares in a Company brought action against a director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013.

Ans- Yes, the Director shall be held liable for the false statements in the prospectus under **sections 34 and 35** of the Companies Act, 2013. Whereas **section 34** imposes a criminal punishment on every person who authorises the

issue of such prospectus, **section 35** more particularly includes a director of the company in the imposition of liability for such misstatements.

The only situations when a director will not incur any liability for mis statements in a prospectus are as under:

(a) No criminal liability under **section 34** shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

(b) No civil liability for any mis statement under **section 35** shall apply to a person if he proves that:

(1) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; **or**

(2) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(3) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by **sub-section (5)** of section 26 to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis statements in the prospectus.

Past Paper Dec 2021

3 Marks

Que 5: RD Ltd. issued a prospectus. All the statements contained therein were literally true. It also stated that company had paid dividends for a number of years but did not disclose the fact that the dividends were not paid out of trading profits but out of capital profits. An allottee of shares claims to avoid the contract on the ground that the prospectus was false in material particulars. Decide that the argument of shareholder, as per the provision of the Companies Act, 2013, is correct or not?

Ans- According to **section 34** of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under **section 447**.

Further, **Section 35(3)** provides that, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in **sub-section (1) of section 35, shall be personally responsible**, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

In the given question, the non-disclosure of the fact that dividends were paid out of capital profits are a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made. Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

Past Paper May 2022

5 Marks

Que 6: The Board of Directors of ABC Limited are proposing to raise funds from the public through issue of equity shares. However, due to volatile financial markets, the price per share and the number of shares to be issued are left open and to be decided post closure of the issue. As a financial advisor of the company, what would you suggest to the Board in this regard as per the provisions of the Companies Act, 2013?

Ans-As a financial consultant the Board of Directors of ABC Limited would be advised to issue a Red Herring Prospectus. The expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. [Explanation to Section 32]

Thus, ABC Limited may raise funds from public through red herring prospectus whereby the price per security and number of securities are left open to be decided post closure of the issue.

The company may follow the provisions of section 32 in issuing a red herring prospectus:

(1) Red Herring Prospectus is issued prior to issue of Prospectus: A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(2) Filing with the registrar: A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(3) Obligations under Red Herring Prospectus vis-à-vis Prospectus: A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(4) Filing of Red Herring Prospectus with Registrar and SEBI upon closing of Offer: Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Study Material/ RTP May 2018

Que 7: Unique Builders Limited decides to pay 25 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 20 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 2013.

Ans: Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription to its securities, subject to a number of conditions which are prescribed under the Companies (Prospectus and Allotment of Securities) Rules, 2014. In relation to the case given, the conditions applicable under the above Rules are as under.

- (a) The payment of such commission shall be authorized in the company's articles of association;
- (b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
- (c) The rate of commission in case of debentures, shall not exceed two and a half per cent (2.5%) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.

Thus, the underwriting commission in case of debentures is limited to 2.5%. In view of the above, the decision of Unique Builders Limited to pay underwriting commission exceeding 2% as prescribed in the Articles, is invalid.

The company may pay the underwriting commission in the form of flats since there is no prohibition on payment of underwriting commission in kind. Further, in **case of Booth v New Africander Gold Mining Co**, it was held that underwriting commission may be paid in cash or in kind or in lump sum or by way of a percentage.

MTP2 Nov 2018/ MTP1 May 2019/ MTP1 Nov 2021

6 Marks

Que 8: What is meant by "Abridged Prospectus"? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form? What are the penalties in case of default in complying with the provisions related to issue of abridged prospectus?

Ans-Meaning of Abridged Prospectus: - According to Section 2(1) of the Companies Act, 2013, an abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Circumstances under which the abridged prospectus need not accompany the application forms: Section 33 (1) of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged prospectus. In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

- (i) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; **or**
 (ii) Where the securities are not offered to the public.

Penalties in case of contravention of provision: a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

MTP May 2020/ RTP May 2020

6 Marks

Que 9: Sudarshan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in Andhra Pradesh. The prospectus issued by the company contained some important extracts of the expert report and number of trees in Andhra Pradesh. The report was found untrue. Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Will Mr. Alok have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

Ans- Under **section 35 (1)** of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Mr. Alok can claim compensation for any loss or damage that he might sustained from the purchase of shares, which has not been mentioned in the given case. Hence, Mr. Alok will have no remedy against the company.

Circumstances when an expert is not liable: An expert will not be liable for any misstatements in the prospectus under the following situations:

- (i) Under **section 26 (5)**, that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or
- (ii) Under **section 35 (2)**, that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
- (iii) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by **section 26(5)** to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.

Chapter 4: Share Capital & Debentures

Study Material, Mtp 1 May 2019, Mtp 1 May 2020, Rtp May 2019

6 Marks

Que 1: Trisha Data Security Limited was incorporated just a year ago with a paid-up share capital of ₹200 crore. Within such a small period of about year in operation, it has earned sizeable profits and has topped the charts for its high employee-friendly environment. The company wants to issue sweat equity to its employees. A close friend of the CEO of the company has told him that the company cannot issue sweat equity shares as minimum 2 years have not elapsed since the time company commenced its business. The CEO of the company has approached you to advise about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just about a year old.

OR

Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid-up share capital of Rs. 200 crores. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old?

OR

Aptech Technology Limited (listed on Stock Exchange) was incorporated on 1st October, 2019 with a paid-up share capital of Rs. 200 crores. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just a few months old?

Ans: Sweat equity shares of a class of shares already issued.

According to **section 54 of the Companies Act, 2013**, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is **authorised by a special resolution passed** by the company;
- (ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the **company are listed on a recognised stock exchange, the sweat equity shares** are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under **Rule 8 of the Companies (Share and Debentures) Rules, 2014**,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under **Section 54 and the holders of such shares shall rank pari passu** with other equity shareholders. Trisha Data Security Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make any difference that the company is just about a year old, because there is no such age (time since commencement of business) requirement under **Section 54**.

Study Material, Mtp 2 May 2023, Rtp May 2021

6 Marks

Que 2: Shankar Portland Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2020 showed the following position:

1. Authorized Share Capital (25,00,000 equity shares of ₹10/- each) ₹2,50,00,000
2. Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ₹10/- each, fully paid-up) ₹1,00,00,000
3. Free Reserves ₹3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

Ans: According to **Section 63 of the Companies Act, 2013**, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of –

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, *unless—*

- (i) it is authorised by its articles;
- (ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- (iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
- (vi) it complies with such conditions as are prescribed by **Rule 14 of the Companies (Share Capital and debentures) Rules, 2014** which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend. For the issue of bonus shares Shankar Portland Cement Limited will require reserves of ₹50,00,000 (i.e, half of ₹1,00,00,000 being the paid-up share capital), which is readily available with the company.

Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Mtp 1 May 2022, Past Paper July 2021

3 Marks

Que 3: "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." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

Ans: 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.

Study material

Que 4: VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further equity shares.

The Board of Directors resolved not to offer any shares to VRS Company Ltd, on the ground that it was already holding a high percentage of the total number of shares issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provided that the new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares to all the shareholders, except VRS Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Ltd. of not offering any further shares to VRS Company Limited.

Ans: The legal issues involved herein are covered under **Section 62 (1) of the Companies Act, 2013. Section 62 (1) (a)** of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid-up capital on those shares.

Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings. As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders.

However, the company offered new shares to all shareholders excepting VRS Company Ltd, which held a major portion of its equity shares. It is to be noted that under the Companies Act, 2013, SV Company Ltd. did not have any legal authority to do so.

Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. is not valid. Such a decision violates the provisions of **Section 62 (1) (a)** as well as Articles of the issuing company.

Study Material, Past Paper May 2022

3 Marks

Que 5: Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to ₹10,00,000 (10,000 preference shares of ₹100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

Ans: According to **Section 55(3) of the Companies Act, 2013**, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—

- with the **consent of the holders of three-fourths** in value of such preference shares, and
- with the **approval of the Tribunal on a petition made by it in this behalf**, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares. In view of the **provisions of Section 55 (3)**, Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e., ₹10,00,000.

For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares.

Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented. On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

Study material

Que 6: OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of ₹4,00,000 to its Human Resource Manager Mr. Surya Nayan, who does not fall in the category of Key Managerial Personnel and draws a salary of ₹40,000 per month, to buy 500 partly paid-up equity shares of ₹1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Ans: Restrictions on purchase by company or giving of loans by it for purchase of its share: As per **section 67 (3) of the Companies Act, 2013** a company is allowed to give a loan to its employees subject to the following limitations:

- The employee must **not** be a director or Key Managerial Personnel;
- The amount of such loan shall **not exceed an amount equal to six months' salary** of the employee.
- The loan must be **extended for subscribing fully paid-up shares**.

In the given instance, Human Resource Manager Mr. Surya Nayan is not a Key Managerial Personnel of the OLAF Limited. Further, he is drawing a salary of ₹40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of ₹1000 each of OLAF Limited in which he is employed.

Keeping the above facts and legal provisions in view, the decision of OLAF Limited in granting a loan of ₹4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to the following reasons:

- The amount of loan is more than 6 months' salary of Mr. Surya Nayan, the HR Manager. It should have been restricted to ₹2,40,000 only.
- The loan to be given by OLAF Limited to its HR Manager Mr. Surya Nayan is meant for purchase of partly paid shares.

Mtp 1 May 2020, Rtp Nov 2021**5 Marks**

Que 7: Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013.

Ans: According to **Section 46(1) of the Companies Act, 2013**, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the **Company Secretary, wherever the company has appointed a Company Secretary**, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the **normal course the person named in the share certificate is for all practical purposes the legal owner** of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. B) any title to the shares. Similarly, any transfer made by Mr. B (to Mr. C) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller. Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (Barton v. North Staffordshire Railway Co.).

In the above case, therefore, Mr. A has the right against the company to get the shares recorded in his name. However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers. However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C.

Mtp 1 Nov 2021, Past Paper Nov 2018**4 Marks**

Que 8: Silver Oak Ltd. has following balances in their Balance Sheet as on 31st March, 2021:

	₹
(1) Equity shares capital (3.00 lakhs equity shares of ₹10 each)	30.00 lacs
(2) Free reserves	5.00 lacs

(3) Securities Premium Account	3.00 lacs
(4) Capital redemption reserve account	4.00 lacs
(5) Revaluation Reserve	3.00 lacs

Directors of the company seeks your advice in following cases:

- (i) Whether company can give bonus shares in the ratio of 1:3?
(ii) What if company decide to give bonus shares in the ratio of 1:2?

Ans: Issue of bonus shares: As per **Section 63 of the Companies Act, 2013**, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

- (i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

As per the given facts, ABC Ltd. has total eligible amount of 12 lakhs (i.e, 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is 30.00 lakhs.

Accordingly:

- (i) For issue of 1:3 bonus shares, there will be a requirement of 10 lakhs (i.e, $\frac{1}{3} \times 30.00$ lakh) which is well within the limit of available amount of 12 lakhs. So, Silver Oak Limited can go ahead with the bonus issue in the ratio of 1:3.
(ii) In case Silver Oak Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of 15 lakhs (i.e, $\frac{1}{2} \times 30.00$ lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of 15 Lakhs is exceeding the available eligible amount of 12 lakhs.

Past Paper Jan 2021

2 Marks

Que 9: The Board of Directors of Rajesh Exports Ltd, a subsidiary of Manish Ltd, decides to grant a loan of 3 lakh to Bhaskar, the finance manager of Manish Ltd, getting salary of 40,000 per month, to buy 500 partly paid-up equity shares of 1,000 each of Rajesh Exports Ltd. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013.

Ans: As per **section 67(2) of the Companies Act, 2013**, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

As per the provisions of **section 67(3)(c) of the Companies Act, 2013**, nothing stated above, shall apply to the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

If we analyse the provisions of section 67(3)(c) of the Companies Act, 2013, we can come to know that the relaxation given here can be availed only when all the following three conditions are fulfilled:

1. The loan has been given to the employees of the company other than its directors or key managerial personnel (not the employee of its holding company). - Therefore, this condition has not been fulfilled;
2. The amount does not exceed their salary or wages for a period of six months. - This condition has not been fulfilled.
3. The amount should be utilized by the employee for purchase of fully shares or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership. - Here Mr. Bhaskar is going to purchase the shares in Rajesh Exports Ltd, which is neither his employer company, nor holding company of his employer company and the shares are not fully paid-up. Therefore, this condition has also not been fulfilled.

Even in case Mr. Bhaskar would not have fulfilled any one of the above conditions, the decision of the Board of Directors of Rajesh Exports Ltd. would not have been valid. Therefore, we can conclude that the decision of the Board of Directors of Rajesh Exports Ltd. is not valid.

Past Paper May 2023

6 Marks

Que 10: Innovative Ltd, a start-up by a few qualified professionals, which was incorporated in 2014. The company is booming and favouring the younger generation to work. The Capital Structure of the company is as follows:

Particulars	INR (Crore)
Authorised Share Capital	10.00
100,00,000 Equity Shares of 10 each Issued,	
Subscribed and Paid-up Share Capital	
50,00,000 Equity Shares of 10 each	5.00
Share Premium	1.00
General Reserve	3.52
Profit & Loss Account	1.58

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of company was passed in this manner.

"The Resolution specifies 15 lakh sweat equity shares, Current Market price 25 per share with a consideration of 5 per share to be issued to a class of directors and employees."

The company seeks your advice with reference to the provision of issue of sweat equity shares under the Companies Act, 2013.

(i) Whether size of issue of sweat equity shares was appropriate?

(ii) Whether lock-in period was justifiable?

Ans: Issue of Sweat Equity Shares: As per **section 53**, a company shall not issue shares at a discount, except as provided in **section 54**.

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to **section 54 (1)**, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely-

- the issue is authorised by a special resolution passed by the company;
- the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, it may issue sweat equity shares not exceeding fifty percent of its paid-up capital up to ten years from the date of its incorporation or registration.

Lock-in Period: **Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014**, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares was appropriate, as the decision of the company to issue 30% sweat equity shares to a class of directors and employees was within the prescribed limit. Resolution containing 15 lakh sweat equity shares was also within the limit of 25 lakh sweat equity shares (i.e., 50% of paid-up capital) with the details as to the current market price and with the consideration to be issued.

(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

Mtp May,24

4 Marks

Que 11 : "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." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

Ans: 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.

Mtp, Jan 25

4 Marks

Que 12: Alpha Limited (listed on Stock Exchange) was incorporated on 1st October, 2019 with a paid-up share capital of 200 crore. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 5 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just a few months old?

Ans: According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is authorised by a special resolution passed by the company;
- (ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the *Companies (Share and Debentures) Rules, 2014*, The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *paripassu* with other equity shareholders.

Alpha Limited can issue sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

Rtp, Jan 25

Que 13: A Bonus share is a distribution of capitalized undivided profit having an identity and value capable of being bought and sold." in reference to the above line elaborate the pre-requisites for issue of bonus shares as enlisted in the Companies Act, 2013.

Ans: Pre-requisites for issue of bonus shares

As per section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

- a. it is authorised by its articles,
- b. it has on the recommendation of the Board, been authorised in the general meeting of the company.

- c. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it.
- d. it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
- e. the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
- f. it complies with such conditions as prescribed by Rule 14 of the Companies (Share capital and debenture) Rules, 2014, that a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.



Chapter 5: Acceptance of Deposits by Companies

Study Material/ Mtp1 May 2023

(4 Marks)

Que 1: Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits

Ans: According to **Rule 2 (1) (c) (xii)** of the Companies (Acceptance of Deposits) Rules, 2014, following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:

(a) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of three hundred and sixty-five days from the date of acceptance of such advance:

However, in case any advance is subject matter of any legal proceedings **before any court of law, the time limit of three hundred and sixty-five days shall not apply.**

(b) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;

(c) any amount received as security deposit for the performance of the contract for supply of goods or provision of services;

(d) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;

(e) any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service **whichever is less;**

(f) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

(g) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

However, if the amount received under **items (a), (b) and (d)** above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date it became due for refund.

Study Material

Que 2: Discuss the following situations in the light of deposit provisions as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

(i) Samit one of the directors of Zorr Technology Private Limited a start-up company, requested his close friend Bitesh to lend to the company 30.00 lakh in a single tranche by way of a convertible note repayable within a period six years from the date of issue Advise whether it is a deposit or not.

(ii) Polestar Traders Limited received a loan of 3000 lakh from Rachna who is one of its directors Advise whether it is a deposit or not

(iii) City Bakers Limited failed to repay deposits of 50.00 crore and interest due thereon even after the extended time granted by the Tribunal to the company or Swat, its officer-in-default, liable to any penalty?

(iv) Shringaar Readymade Garments Limited wants to accept deposits of 50.00 lakh from its members for a tenure which is less than six months. Is it a possibility?

(v) Is it in order for Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?

Ans: (i) In terms of **Rule 2 (1) (c) (xvii)** if a **start-up company receives rupees twenty-five lakh or more** by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it **shall not be treated as deposit**.

In the given case, Zarr Technology Private Limited, a start-up company, received 3.00 lakh from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of 30,00 lakh shall not be considered as deposit

(ii) In terms of **Rule 2 (1) (c) (viii)**, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of Rs 30.00 lakh from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

If these conditions are satisfied 30.00 lakh shall not be treated as deposit

(iii) By not repaying the deposit of 50.00 crore and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under **Section 73** of the Act. Accordingly, following penalty is leviable:

Punishment for the company: City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than rupees one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to rupees ten Crores

Punishment for officer-in-default: Swati, being the officer-in- default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty-five lakh but which may extend to rupees two crore.

Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under **section 447 (Punishment for fraud)**.

(iv) According to **Rule 3 (1)**, a company is not permitted to accept or renew deposits (whether secured or unsecured) which are repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

(i) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

(ii) such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of 50.00 lakh from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

(v) According to **section 73 (1)** of the Act, no company can accept or renew deposits from the public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from the public.

However, **Proviso to Section 73 (1)** states that nothing in this subsection shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

Further, **Rule 1 (3) (iii)** states that the Companies (Acceptance of Deposits) Rules, 2014 shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore, the Acceptance of Deposits' Rules shall not apply to it

Hence, Diamond Housing Finance Limited being an exempted company, can accept and renew deposits from the public from time to time without following the prescribed manner.

Study Material/ Mtp1 Nov 2021/ Mtp2 May 2022/ Mtp1 Nov 2022/ Papst Paper Nov 2019 **4 Marks/ 6 Marks**

Que 3: Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:

(i) 5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.

(ii) 2,00,000 received by Raja Yarns Limited from its employee Mr. Tarun, who draws an annual salary of 1,50,000, as a non-interest-bearing security deposit under a contract of employment.

(iii) 3,00,000 received by a private company from one of the relatives of a director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift.

(iv) Textile Traders Limited received a loan of ₹30,00,000 from R who is one of its directors

Ans: Deposit: According to **Section 2 (31)** of the Companies Act, 2013, the term 'deposit includes' any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve bank of India.

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits.

In terms of this Rule the answers to the given situations shall be as under:

(i) 5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of **sub-clause (ix) of Rule 2 (1) (c)**.

(ii) 2,00,000 received by Raja Yarns Limited from its employee Mr. Tarun, who draws an annual salary of 1,50,000, as a non-interest-bearing security deposit under a contract of employment will be considered as deposit in terms of **sub-clause (x) of Rule 2 (1) (c)**, for the amount received is more than his annual salary of 1,50,000.

(iii) 3,00,000 received by a private company from one of the relatives of a director. When the relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of **sub-clause (viii) of Rule 2 (1) (c)**. In fact, the preceding sub-clause requires that any amount given by a relative of a director of a private company shall not be considered as deposit if the relative furnishes a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others. Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'.

As an additional requirement, the company shall disclose the details of money so accepted in the Board's report. Further, according to **Rule 16 (A) (2)**, it shall also disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.

(iv) In terms of **Rule 2 (1)(c)(viii)**, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, ₹30,00,000 received as a loan by Textile Traders Limited from R (a director) shall not be treated as deposit, if he was a director at the time of giving such loan and had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

Study Material/ Mtp2 May 2021/ Rtp Nov 2020/ Rtp May 2023/ Past Paper May 2019

4 Marks

Que 4: State, with reasons, whether the following statements are 'True or False'?

- (i) ABC Private Limited may accept deposits from its members to the extent of 50.00 lakh, if the aggregate of its paid-up capital, free reserves and security premium account is 50.00 lakh.
- (ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.
- (iii) Wire Electricals Limited having paid-up capital of ₹1.00 crore availed a term loan of ₹10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?

Ans: (i) As per the provisions of **Section 73 (2)** of the Companies Act, 2013 read with **Rule 3 (3)** of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty-five per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. It is provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in **Form DPT-3**. Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of 50.00 lakh is 'true'.

(ii) As per **Rule 3 (5)** of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under **section 76**, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty-five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is 'false'.

(iii) In terms of **Rule 2 (1) (c) (iii)** of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.

In view of the above, the contention of Mr. Taar that the term loan of ₹10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct.

Past Paper Nov 2020

6 Marks

Que 5: Viki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/ Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:

Paid up share capital ₹70 Crores

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CA Adarsh Joshi

Securities Premium	₹20 Crores
Free Reserves	₹20 Crores
Long-term borrowings	₹50 Crores

The Company in the advertisement invited public deposit for a period of 4 Months Plan A and Plan B for 36 Months.

(i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.

(ii) Calculate the maximum amount of deposit Viki Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act.

Ans- According to **Rule 2(1)(e)** of the Companies (Acceptance of Deposits) Rules, 2014 "eligible company" means a public company as referred to in **sub-section (1) of section 76** of the Companies Act, 2013, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.

Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of **sub-section (1) of section 180**, may accept deposits by means of an ordinary resolution.

Net worth of Viki Limited as per **section 2(57)** of the Companies Act, 2013 can be calculated as follows:

Paid up share capital:	₹70 crores
Free Reserves:	₹20 crores
Securities premium:	₹20 crores
Total:	₹110 crores

Hence, Viki Limited is an eligible company, since its Net worth is in excess of ₹100 crores.

Tenure for which Deposits can be Accepted: As per **Rule 3(1)(a)** of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

Exception to the rule of tenure of six months: As per the proviso to the above rule, for the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

As per **Rule 3(1)(b)** of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

Maximum Number of Deposits: As per **Rule 3(4)(b)** of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from persons other than its members. As per the law the amount of such deposit together with the number of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum twenty-five percent of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

For Plan A: Since the maximum period of deposits is 4 months, the maximum number of deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Maximum number of deposits: 10% of 110 crores (70 + 20 + 20) = 11 crores.

For Plan B: Maximum number of deposits: 25% of 110 crores (70 + 20 + 20) - 11 crores (outstanding deposit under plan A) = 16.5 crores.

(ii) In terms of **Rule 3(5)** of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account.

For Plan B: Maximum number of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

Past Paper Nov 2022

4 Marks

Que 6: Perfect Limited Company raised the secured deposit of 100 crores on 30th June, 2021 from the public on interest @ 12% p.a. repayable after 3 years. The charges have been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & building	₹60 crores
Plant & machinery	₹20 crores
Factory Shed	₹20 crores
Trade Mark	₹20 crores
Goodwill	₹25 crores

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014.

Ans- As per **second proviso to Section 76(1)** of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the number of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

In respect of creation of security, **Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014**, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

The other notable points are:

- The company cannot create charge on intangible assets (i.e., goodwill, trade-marks, etc).
- Total value of security should not be less than the number of deposits accepted and interest payable thereon.
- The market value of assets subject to charge shall be assessed by a registered valuer.
- The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

In the given question,

Particulars	Amount (in ₹)
Total value of security (value of assets on which charge can be created)	60+20+20 [Land and Building, Plant & machinery and Factory Shed] = 100 crores
Total deposits accepted and interest payable thereon	100+ [(100*12%) *3 years] = 136 crores

Since, the total value of security is less than the number of deposits accepted and interest payable thereon, hence the charge is not validly created.

RTP May 2024

Que 7: NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was ` 90 crore and turnover for the year 2022-23 was ` 510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company.

Furthermore, the company has accepted a loan of ` 15 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report.

On the basis of above facts answer the following questions:

(i) Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013?

(ii) With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not?

Ans: As per *Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014*, the term "eligible company" means a public company as referred to in **section 76(1)** of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. *Accordingly:*

• It should be a public company.
• It should have net worth of minimum ` 100 crore or a turnover of minimum ` 500 crore.
• It has obtained the prior consent by means of a special resolution passed in general meeting.
• The special resolution has been filed with the Registrar of Companies.
• An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c).

In the instant case, the turnover of NOP Limited is ` 510 crore, hence it is eligible to accept deposits from the public.

Tenure for which Deposits can be Accepted: A company is not permitted to accept or renew deposits (whether secured or unsecured) which is *repayable on demand or in less than six months*. Further, the maximum period of acceptance of deposit *cannot exceed thirty-six months*. The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013.

(ii) In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, *any amount received from a person who is director of the company at the time of giving loan* to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, the said deposits by Mr. P Kishore shall not be treated as deposit.

Mtp, Jan 25

Que 8: Mr. Romit is an employee of PQR Trading Private Limited. As per his contract of employment, his annual salary is 5,00,000. Mr. Romit paid to the company 5,30,000 in the nature of non-interest-bearing security deposit. Referring to the provisions of the Companies Act, 2013, decide whether this amount received from Mr. Romit will be considered as deposit as per rule 2(1)(c)?

Ans: Rule 2(1)(c) of the Companies (Acceptance of Deposit) Rules, 2014, states various amounts received by a company which will not be considered as deposits. As per rule 2(1)(c)(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit is not considered as deposit.

In the instant case, ` 5,30,000 was received by PQR Trading Private Limited as a non-interest-bearing security deposit, from its employee, Mr. Romit, who draws an annual salary of ` 5,00,000 under a contract of employment. Accordingly, amount of ` 5,30,000 received from Mr. Romit, will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c) of the Act, as the amount received from Mr. Romit is more than his annual salary of ` 5,00,000.

Chapter 6: Registration of Charges

Study Material/ RTP May 2018/ MTP Nov 2019/ MTP1 May 2021/ MTP2 Nov 2021/ MTP2 May 2022 **3 Marks**

Que 1: Mr. Antriksh purchased a commercial property in Delhi belonging to NRT Limited after entering into an agreement with the company. At the time of registration, Mr. Antriksh came to know that the title deed of the company was not free and the company expressed its inability to get the title deed transferred in Antriksh's name contending that he ought to have the knowledge of charge created on the property of the company. Explain whether the contention of NRT Limited is correct?

Ans: According to **section 80** of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under **section 77** of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have **notice of the charge** from the date of such registration.

Thus, **Section 80** clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of the charge from the date of its registration.

Mr. Antriksh, therefore, ought to have been careful while purchasing property and should have verified beforehand that NRT Limited had already created a charge on the property. In view of the above, the contention of NRT Limited is correct.

Study Material/ MTP Nov 2020/ MTP1 Nov 2022 **4 Marks**

Que 2: 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.

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 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.

MTP2 May 2023/ PAST PAPER Jan 2021 **5 Marks**

Que 3: Star Ltd. is having its establishment in Canada. It obtained a loan there creating a charge on the assets of the foreign establishment. The company received a notice from the Registrar of Companies for not filing the

particulars of charge created by the company on the property or assets situated outside India. The company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Star Ltd.? Give your answer with respect to the provisions of the Companies Act, 2013.

Ans- According to **section 77** of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge.

Thus, charge may be created within India or outside India. Also, the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment. As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge.

Hence, the stand taken by Star Ltd. not to register the particulars of charge created on the assets located outside India is not correct.

Mtp Sept 24

5 Marks

Que 4: What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company.

Discuss this matter in the light of provisions of the Companies Act, 2013.

Ans: Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

This situation would arise where the property subject to a charge is sold to a third-party and neither the company nor the charge-holder has intimated the Registrar regarding satisfaction of the earlier charge.

Accordingly, with respect to any registered charge if evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied wholly 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
- 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.

According to section 82 (4), section 82 shall not be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company i.e. even if no intimation is received by him from the company.

Information to affected parties: According to **section 83 (2)**, 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)** of companies (registration of charges) Rules, 2014, in case the registrar enters a memorandum of satisfaction of charges in full, he shall issue a certificate of registration of satisfaction of charge.

Chapter 7: Management & Administration

Study material

Que 1. M. H. Mechanics Company Limited served a notice of General Meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Mechanics Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Mechanics Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.

Ans: Under **section 102 (2) (b)** of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under **section 102 (1) a statement setting** out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting:

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each item, of every director and the manager, if any or all other key managerial personnel and relatives of such persons; and
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. Thus, the objection of the member is valid since the complete details about the issue of sweat equity were required to be sent with the notice of meeting. The notice is, therefore, cannot be said to be a valid one when the provisions of **Section 102 of the Companies Act, 2013 are considered.**

Study Material, Mtp 1 May 2018, Rtp Nov 2018

8 Marks

Que 2: Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

- (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.
- (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

Ans: **Section 109** of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, **section 109 (1)** lays down as under:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:- (a) In the case of a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand for poll: According to **section 109 (2)**, the demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll subject to the provisions contained in the articles of company.
- (ii) The chairman cannot reject the request of the members for withdrawal of the demand for poll.

Study Material, Mtp 1 May 2021, Rtp Nov 2019, Rtp May 2020

5 Marks

Que 3: Infotech Ltd. was incorporated on 14.2.2018. No General Meeting of the company has been held till 30.4.2020. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general

meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

OR

Shambhu Limited was incorporated on 1.4.2018. The company did not have much to report to its shareholders, so no general meeting of the company has been held till 30.4.2020. The company has recently appointed a new accountant. The new accountant has pointed out that the company required to hold the Annual General Meeting. The company has approached you a senior Chartered Accountant. Please advise the company regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Ans: According to **Section 96** of the Companies Act, 2013, every company shall be required to hold its first Annual General Meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2018 to 31st March 2019, the first Annual General Meeting (AGM) of the company should be held on or before 31st December, 2019.

The section further provides that the Registrar may, for any special reason, extend the time within which any Annual General Meeting, other than the first Annual General Meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of Infotech Ltd. should have been held on or before 31st December, 2019. Further, in case of first AGM, the Registrar of Companies does not have the power to grant extension of any time limit.

Study Material, Mtp 1 Nov 2018, Mtp 1 Nov 2022, Rtp May 2020

5 Marks

Que 4: The Articles of Association of DJA Water Tanks Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra ordinary general meeting to consider the appointment of Managing Director:

(i) A is the representative of Governor of Uttar Pradesh.

(ii) B and C are preference shareholders,

(iii) D is representing Y Ltd. and Z Ltd.

(iv) E, F, G and H are proxies of shareholders.

Could it be said that the quorum was present in the meeting?

Ans: According to **section 103** of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purpose of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further, the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present. In view of the above there are only three members personally present. 'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies

'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but proxies representing the members.

Thus, it can be said that the requirement of quorum has not been met and the composition shall not constitute a valid quorum for the meeting.

Study Material, Rtp Nov 2020, Past Paper May 2019

6 Marks

Que 5: Madurai Basketry Ltd. issued a notice for holding of its Annual General Meeting on 7th September, 2022. The notice was posted to the members on 16th August, 2022. Some members of the company alleged that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not valid. Referring to the provisions of the Act, decide:

- (i) Whether the meeting has been validly called?
- (ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
- (iii) Can the delay in giving notice be condoned?

Ans: According to **section 101(1)** of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been affected - in the case of a notice of a meeting, at the expiration of forty-eight hours after the letter containing the same is posted.

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Study Material, Mtp 2 May 2019, Mtp 1 May 2022, Mtp 2 May 2023

4 Marks

Que 6: Miraj Sugar Mills Limited held its Annual General Meeting on September 15, 2022. The meeting was presided over by Mr. Venkat, the Chairman of the Board of Directors of the company. On September 17, 2022, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

OR

Miraj Limited held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2018, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

OR

A Ltd. held its Annual General Meeting on September 15, 2021. The meeting was presided over by Mr. B, the Chairman of the Company's Board of Directors. On September 17, 2021, Mr. B, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. B and by whom?

OR

Moon Light Ltd. held its Annual General Meeting on September 15, 2022. The meeting was presided over by Mr. Shreeram, the Chairman of the Company's Board of Directors. On September 17, 2022, Mr. Shreeram, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in USA. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Shreeram and by whom?

Ans: **Section 118** of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitions and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014

read with **section 118** of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that Chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any other director also who is authorized by the Board.

Rtp May 2019

Que 7: Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:

(i) EGM be held in India (ii) EGM be held in Netherlands

Ans: According to **section 100** of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company. Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

In the light of the above provisions:

(i) The Board of Directors can call the EGM in India.

(ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

Past Paper Dec 2021

4 Marks

Que 8: Explain the provisions of e-voting in an annual general meeting in the following cases as per the Companies Act, 2013:

(i) 'A' and his wife 'B' has joint Demat Account in Alfa Investment Ltd. in such a case, who will cast the vote in e-voting system?

(ii) AGM is going to be held on 07-09-2020. Then what will be the e-voting period and the time of closing?

Ans: (i) **Joint shareholders must concur in voting unless the articles provide to the contrary.** The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register. As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio. Thus, in the given case, 'A' or his wife 'B', whosoever names appear first in chronological order in the register of members/ shareholders shall be entitled to vote.

(ii) **Time period for e-voting:** The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

Thus, if the Annual General Meeting is going to be held on 7.9.2020, the facility for remote e-voting shall open on 4.9.2020 and close at 5.00 p.m. on 6.9.2020.

Past Paper May 2023

4 Marks

Que 9: L Ltd. having 2,000 members with paid-up capital of ` 1 crore, decided to hold its Annual General Meeting (AGM) on 21st August, 2022. On 2nd July, 2022, 50 members holding paid-up capital of ` 6 lakh in aggregate, has given notice of their intention for a resolution to be passed at the Annual General Meeting for appointing Dawar & Co, as its Statutory auditor from Financial Year 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?

Ans: 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 five lakh rupees, as may be prescribed, 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 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.

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 1 crore, and it received a notice from its 50 members holding paid-up capital of 6 lakh, 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 L Ltd.

[Note: In the given question 50 members are holding paid-up share capital of 6 lakh. In fact they are holding more than 1% of total voting power as the paid-up share capital of the company is 1 crore

This can also be considered as fulfillment of the condition. Further, a presumption may be taken that these members are holding equity shares carrying voting rights in absence of any specific information given in the question regarding class of shares.]

RTP May 2024

Que 10: Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of ₹one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated.

(i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.

(ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.

Ans: (i) In terms of *section 111 of the Companies Act, 2013*, the members of a company are given a statutory right to propose resolutions for consideration at the general meetings. According to sub-section (1), the number of members required to make a requisition for moving resolution shall be same as required to requisition a general meeting as per *section 100 (2)*. The requirement is as under:

"In case of a company having share capital, such **number of members who hold minimum 1/10th of the paid-up share capital that carries right of voting shall be eligible** to make a requisition for moving a resolution at the general meeting."

Accordingly, Prakash and his friends must hold minimum 1/10th of paid-up share capital (i.e. ` 10 lakh worth of share capital carrying right to vote) of Focus Limited in order to be eligible for moving a resolution at the general meeting.

(ii) The other requirements as per *section 111 for making a requisition to move a resolution* at the general meeting which Prakash and his friends should keep in mind are as under:

(a) Two or more copies of the requisition are required to contain signatures of all the requisitionists i.e. Prakash and friends.

(b) The requisition must be deposited by them at CP where the registered office of Focus Limited is situated.

(c) In the case of a requisition requiring notice of a resolution, it needs to be deposited by them not less than six weeks before the meeting.

(d) In case of any other resolution, the same is to be deposited by them not less than two weeks before the meeting.

(e) A sum reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing the resolution shall also be deposited by Prakash and his friends along with the requisition.

Mtp Jan 25,

Que 11: Examine the validity of the following decision of the Board of Directors with reference to the provisions of the Companies Act, 2013:

In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

Ans: Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that: -

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf: -

(i) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(ii) In the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

In the given question, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. Hence, the contention of the Chairman is not valid.

Mtp, Jan 25

Que 12: Verma Limited has Equity Share Capital of 20,000 shares @ ₹10 each. The Company has received a requisition from Mr. Jai and Mr. Narayan each holding 3,000 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desire to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013

Ans: As per section 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting.

The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub-Section 4].

Sub-section (5) of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner in which the meeting is called and held by the Board.

Sub-section (6) of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

In the given case, meeting called by requisitionists to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. Jai and Mr. Narayan holding 60,000 (each holding 30,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

Rtp, Jan 25

Que 13: Pran Limited is an unlisted company, having its registered office at Agartala. The company scheduled its Annual General Meeting (AGM) on 31st July, 2024 in Goa. The meeting commenced at 3:00 PM and concluded at 6:00 PM.

It is also provided that by 1st July, 2024, the company had obtained written consent from all members via email, agreeing to hold the AGM at this out-of-state location. As per the Companies Act, 2013, evaluate whether the AGM was validly conducted.

Ans: Section 96(2) of the Companies Act, 2013, states that every annual general meeting shall be called during business hours, that is, between 9 AM and 6 PM on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

In the given question, Pran Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (by 1st July, 2024). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

Chapter 8: Declaration & Payment of Dividend

Study Material/ MTP1 Nov 2022/ MTP1 May 2023

(6 Marks)

Que 1: The Annual General Meeting of ABC Bakers Limited held on 30th May, 2022, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2022. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act.

Ans- **Section 127 of the Companies Act, 2013** lays down the penalty for nonpayment of dividend within the prescribed **time period of 30 days**.

According to this section where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration of dividend to any shareholder entitled to the payment of dividend:

(a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and

(b) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

Therefore, in the given case Mr. Ranjan will not succeed if he claims interest at 20% interest as the limit under **section 127** is 18% per annum.

Study Material/ Mtp Nov 2020/ Rtp May 2021/ Past Paper May 2018

(3 Marks)

Que 2: Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2023. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.

Ans- According to **Section 8(1)** of the Companies Act, 2013, the companies licenced under **Section 8** of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed.

Hence, in the instant case, the proposed act of Alpha Herbals, a company licenced under **Section 8** of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

Study Material/Mtp2 May 2019/Mtp Nov 2020/Mtp2 Nov 2022/Past Paper Nov 2018

(3 Marks)

Que 3: YZ Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2022-2023 out of the profits of current year. The company has earned a profit of ₹910 crores during 2022-2023. The company does not intend to transfer any amount to the general reserves out of the profits. Is YZ Medical Instruments Limited allowed to do so? Comment.

Ans- According to **section 123 of the Companies Act, 2013** a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Medical Instruments Limited has earned a profit of ₹ 910 crores for the financial year 2022-2023. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if YZ Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

Rtp May 2022

Que 4: Vishal Limited has paid dividend consistently every year at the rate of 10% on its equity share capital in the last 5 years (2015-2016 to 2019-2020). The company has incurred loss in the current financial year (FY 2020-2021). It still wants to declare dividend for the FY 2020-2021. Whether the company can do so? Explain.

Ans- As per second proviso to **Section 123(1)** of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, where in any year there is absence of profit or there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves, only in accordance with the procedure laid down.

However, such declaration shall be subject to the following conditions:

(a) 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. Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

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

(c) The amount so drawn shall first be utilized 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.

(d) 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.

Hence, if the company wants to pay dividend in the current financial year, it can do so if all the above conditions have been fulfilled.

RTP May 2020

Que 5: MNP Ltd. has a paid-up share capital of ` 10 crore and free reserves of ` 50 crore, as on 31st March, 2019. The company made a loss of ` 40 lakh after providing for depreciation for the year ended 31st March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend.

Ans- As per **Second Proviso to Section 123 (1), in the event of inadequacy or absence** of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration shall be subject to the following conditions as per **Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.**

(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. As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this condition is fulfilled.

(ii) The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement. Amount of dividend proposed: ₹2 Crores (20% of ` 10 Crore i.e. on paid up capital) 10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = ` 6 Crore. This condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

(iii) The amount so drawn shall first be utilized 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.

(iv) After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement. Balance of reserves after payment of dividend: ` 48 crore (50 crore – 2 crore) 15% of paid-up share capital: 1.5 crore (15% of 10 crore) This condition is fulfilled.

Taking into account all the conditions, it can be said that declaration of dividend by MNP Limited is valid.

Past Paper Nov 2020

Que 6: AB Limited is a public company having its registered office in Coimbatore. The company has incurred a net loss of ₹20 lakhs in the Financial Year (FY) 2019-20. The Board of Directors (BOD) wants to declare dividend for the FY 2019-20. The balances of the company as per the latest audited financial statements are as follows:

1. Equity Share Capital (₹10 each) - ₹100 lakhs
2. General Reserve - ₹150 lakhs
3. Debenture redemption Reserve - ₹50 lakhs

The company has not declared any dividend in the preceding three financial years. Decide whether AB Limited is allowed to declare dividend or not for the FY 2019-20 by explaining the relevant provisions of the Companies Act in this regard.

If allowed to declare dividend then state the maximum amount of dividend that can be paid by AB Limited as per the Section 123 of Companies Act 2013.

Ans- In the given case, AB 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
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Proposed withdrawal declaration of dividend	₹5 Lakhs
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Balance of Reserves	₹145 Lakhs
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This is more than 15% of paid-up capital (i.e. 15% of ₹100 Lakhs) i.e. ₹15 lakhs.

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

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

Mtp, May 24

Que 7: Sunday 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 a special part of machinery, company incurred losses in current financial year.

Even though, during the financial year 2023-24, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the financial year 2023-24 in its meeting held on 5th August, 2024, and recommended a final dividend of @15% in this board meeting.

The general meeting of the shareholders was convened on 31st August, 2024. 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.

Advise whether the 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.

Ans: 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 or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or 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. [Clause 80 of Table F in Schedule) According to the given facts, Sunday Ltd. incurred losses in current financial year 2023-24. It is also provided that, in the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively. Accordingly, the rate of

Accordingly, 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.

Board of Directors of Sunday Ltd. recommended a final dividend @15% for financial year 2023-24 in the meeting held on 5th August 2024. 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.

Mtp, Jan 25

Que 8: Anoj Limited declared a final dividend to its shareholders at the Annual General Meeting on 1st August, 2024. As per the decision, the dividend payment was to be made within the stipulated 30-day period. However, due to internal financial constraints, the company failed to pay the declared dividend and did not dispatch the dividend warrants to the shareholders within the required timeframe. The default continued until 15th October, 2024, leading to shareholder complaints.

In light of this scenario, what specific punishments and liabilities could the company and the directors face due to this failure to pay the declared dividend within the 30-day period? Give your answer as per the provisions of the Companies Act, 2013.

Ans: 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, following punishments are applicable:

- (i) Every director of the company shall be punishable with imprisonment of up to two years, if he is knowingly a party to the default. And, he shall also be liable to pay minimum fine of 1,000 for every day during which such default continues.
- (ii) The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Chapter 9: Accounts of Companies

Study Material, Mtp 1 Nov 2020, Mtp 2 Nov 2021, Mtp 2 May 2023, Rtp May 2021, Past Paper May 2019 **6 Marks**

Que 1: The Income Tax Authorities in the current financial year 2022-23 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2011-12 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2011-12. Examine the validity of the application filed by the Income Tax Authorities to NCLT

Ans: As per **section 130 of the Companies Act, 2013**, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

- (i) The relevant earlier accounts were prepared in a fraudulent manner; or
- (ii) The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, **no order shall be made in respect of re-opening of books of account** relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2011-2012 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e., 2022-2023, is invalid.

Mtp 1 Nov 2018, Mtp 2 Nov 2022

6 Marks

Que 2: The Companies Act, 2013 has prescribed an additional duty on the Board of Directors to include in the Board's Report a 'Directors' Responsibility Statement'. Explain briefly the details to be furnished in the said statement

Ans: **Section 134(3)(c) of the Companies Act, 2013** provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include a number of statements as prescribed in the sub section including Directors' Responsibility Statement.

Further section 134(5) states that the Directors Responsibility Statement shall state that:

(i) In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
(ii) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period;
(iii) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
(iv) that the directors had prepared the annual accounts on a going concern basis; and
(v) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively; and
(vi) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Rtp May 2018

Que 3: Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

Financial year	Amount (₹In crores)
2012-13	20
2013-14	40
2014-15	30
2015-16	70
2016-17	50

(i) Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.

(ii) State the composition of the CSR committee unlisted company and a private company.

Ans: **Section 135** read with **Companies (Corporate Social Responsibility Policy) Rules, 2014** of the **Companies Act, 2013** deals with the provisions related to the Corporate Social Responsibility.

As per the given facts, following are the answers in the given situations –

(i) Amount that Company has to spend towards CSR: According to **section 135** of the Companies Act, 2013, the Board of every company 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, in pursuance of its CSR Policy.

Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.

(ii) Composition of CSR Committee: The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director.

(a) an unlisted public company or a private company covered under **section 135(1)** which is not required to appoint an independent director, shall have its CSR Committee without such director;

(b) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

Rtp May 2023

Que 4: 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: -

Sr. No	Particulars
1.	A member individually holding shares with face value of 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 12% of the total paid-up share capital of the company

In the AGM held on 25th August, 2022, the 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?

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 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 sent notice and other relevant documents to only following category of members: -

- (i) Two members jointly holding shares with face value of 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.

Rtp May 2023

Que 5: Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

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.

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 Red Limited for the FY 2021-22 is ₹7 crores, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ₹5 crores.

2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited 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% of ₹6 crore = 0.12 crore or ₹12 Lacs.

Past Paper Nov 2020

(6 Marks)

Que 6: Explain the following in brief with reference to Companies Act 2013:
National Financial Reporting Authority (NFRA)

Ans: According to **section 132 of the Companies Act, 2013**, the Central Government may, by notification, constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.

Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

- (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

RTP May 2024

Que 7: The Governments of Tamil Nadu and Andhra Pradesh collectively hold 60% of the paid-up Equity Share Capital of Orange Limited. The audited financial statements of Orange Limited for the financial year 2022-23 were presented at its Annual General Meeting convened on 17th August, 2023. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. Therefore, the company did not file its financial statements with the Registrar of Companies. Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 20th September, 2023 whereat the accounts were adopted. Thereafter, Orange Limited filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 29th September, 2023.

Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Orange Limited has complied with the statutory requirement regarding filing of accounts with the Registrar.

Ans: According to first provision to **section 137(1)** of the Companies Act, 2013, where the financial statements are not adopted at Annual General Meeting (AGM) or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of Annual General Meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned Annual General Meeting for that purpose.

According to second proviso to **section 137(1)** of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Orange Limited were adopted at the adjourned AGM held on 20th September, 2023 and filing of financial statements with Registrar was done on 29th September, 2023 i.e. within 30 days of the date of adjourned AGM. However, Orange Limited has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 17th August, 2023.

Hence, Orange Limited has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Mtp1 Sept 2024

3 Marks

Que 8: Vishal Ltd, an unlisted company, has been directed by the Central Government to prepare periodical financial results and undergo a limited review of these results. The Board of Directors is objecting, arguing that, as an unlisted entity, they are not required to prepare periodical financial results. Analyse this situation with reference to the relevant provisions of the Companies Act, 2013.

Ans: Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,

- | |
|--|
| (a) to prepare the financial results of the company on periodical basis and in prescribed form |
| (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and |
| (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed. |

Therefore, the objection of the Board of Directors on the ground that as Vishal Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. [Section 129A clearly specifies that the prescribed class\(es\) of unlisted companies has to prepare Periodical Financial Results.](#)

MTP1 Jan 25

5 Marks

Que 9: State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a company. Support with the help of relevant provisions of the Companies Act, 2013.

Ans: Persons responsible to maintain books: As per section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc.

shall be:

- (a) Managing Director,
- (b) Whole-Time Director, in charge of finance
- (c) Chief Financial Officer
- (d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Chapter 10: Audit and Auditors

Study Material

Que 1: State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013;

(i) Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company.

(ii) Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.

Ans: (i) **Section 139(6)** of the Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.

Section 139 (6) continues to provide further that if the Board of Directors fails to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

- a. Inform the members of the Company;
- b. Immediately take steps to convene an extra ordinary general meeting not later than 90 days;
- c. Members shall at that extra ordinary meeting appoint the first auditors of the company;
- d. The first auditors so appointed shall hold office up to the conclusion of the first AGM of the company.

(ii) **Section 140** of the Companies Act, 2013 prescribes certain 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, 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.

Study Material, Mtp 2 May 2023, Rtp May 2021, Past Paper May 2019

3 Marks

Que 2: The Board of Directors of A Limited requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as a Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

Ans: According to **section 144** of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in **Section 147** of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Mtp 1 May 2018

Que 3: Natraj Limited is an unlisted public company having paid up share capital of 80 crores during the preceding financial year 2016-17. The turnover of the company was 110 crores for the same period. Referring to the provisions of the Companies Act, 2013, discuss the answer to the following:

(i) Is it mandatory for the above company to appoint an internal auditor for the financial year 2017-18?

(ii) What are the qualifications of the Internal Auditor?

Ans: (i) Class of companies required to appoint Internal Auditor: **Section 138** of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014 prescribes the class of companies required to appoint Internal Auditor. 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; and

3. Every private company having –

(a) Turnover of 200 crore rupees or more during the preceding financial year; or

(b) 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.

As per the facts given in the question, Natraj Limited is an unlisted public company with the paid-up share capital of ` 80 cores during the preceding financial year with the turnover of 110 crores. Since, Natraj Limited fulfils one of the criteria with paid up share capital of more than 50 crore rupees during the preceding financial year, it is mandatory for the Natraj Limited to appoint an internal auditor for the financial year 2017-18.

(ii) Qualifications of Internal Auditor

(a) Internal Auditor 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.

Here, the term "Chartered Accountant" or "Cost Accountant" shall mean a "Chartered Accountant" or a "Cost Accountant", as the case may be, whether engaged in practice or not.

(b) The internal auditor may or may not be an employee of the company.

Mtp 1 Nov 2018

(6 Marks)

Que 4: Examine the validity of the following with reference to the provisions of the Companies Act, 2013: -

(i) DON Limited appointed an individual firm, Nat & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2017. Mrs. Kat, wife of Mr. Nat, invested in the equity shares face value of Rs. 1 lakh of DON Limited on 15th October, 2017. But Nat & Company continues to function as statutory auditors of the company.

(ii) Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place?

Ans: (i) Disqualification of auditor: According to **section 141(3)(d)(i)** of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Nat, Chartered Accountants, did not hold any such security. But Mrs. Kat, his wife held equity shares of DON Limited of face value Rs. 1 lakh, which is within the specified limit.

Hence, Nat & Company can continue to function as auditors of the Company even after 15th October 2017 i.e., after the investment made by his wife in the equity shares of DON Limited.

(ii) **Removal of first auditor:** **Section 140(1)** stipulates that any auditor appointed under **section 139** may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf.

Provided that before taking any action under **subsection (1) of Section 140**, the auditor concerned shall be given a reasonable opportunity of being heard.

The first auditors appointed by Board of Directors can be removed in accordance with the provision of **Section 140(1)** of the Companies Act, 2013. Hence, the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

Mtp 1 May 2023, Rtp Nov 2021

6 Marks

Que 5: The Board of Directors of Stamp Limited, a listed company appointed Mr Chatterjee, Chartered Accountant as its first auditor within 30 days of the date of registration of the company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Chatterjee was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

- (i) Appointment of Mr. Chatterjee by the Board of Directors.
- (ii) Re-appointment of Mr. Chatterjee at the first AGM in the above situation.

OR

The Board of Directors of Moon Light Limited, a listed company appointed Mr. Teja, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Teja was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

- (i) Appointment of Mr. Teja by the Board of Directors.
- (ii) Re-appointment of Mr. Teja at the first AGM in the above situation.

Ans: 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. Chatterjee by the Board of Directors is valid as per the provisions of **section 139(6)**.
- (ii) Appointment of Mr. Chatterjee 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. Chatterjee 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.

Past Paper July 2021

5 Marks

Que 6: Johnson Limited goes for public issue of its shares. The issue was oversubscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, Whole time

Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act.

State, who are the persons considered as officers in default under the Companies Act, 2013.

Examine who will be considered in default in the instant case?

Ans: As per **section 39** of the Companies Act, 2013, which deals with the allotment of securities, states that in case of any default related to minimum subscription and of return of allotment money under **sub-section (3) and (4)**, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

As per **section 2(60)** of the Act, Officer who is in default, has been described as:

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely: —

- (i) whole-time director (WTD);
- (ii) key managerial personnel (KMP);
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility.
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act,
- (vi) every director, in respect of a contravention of any of the provisions of this Act,
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

In the given case, as stated Johnson Limited, committed a default with respect to the allotment of shares by the officers. As in company there were no managing director, whole time director, or any other officer/person designated by the Board with the responsibility of complying with the provisions of the Act. Therefore, in such situation, all the directors of the company may be treated as officers in default.

Past Paper Dec 2021

(5 Marks)

Que 7: Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following:

- (i) XYZ Ltd. is a newly established company owned by the Central Government. State the provisions regarding appointment of its first auditor.
- (ii) Mr. Kamal is the auditor of XYZ Limited, which is a government company. He has resigned on 31st December, 2020 while the financial year of the company ends on 31st March, 2021. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a government company?

Ans: (i) First auditor

(1) According to **section 139(7)** 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 first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.

(2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.

(3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an Extraordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting. XYZ Ltd. can follow the above provisions for appointment of its first auditor.

(ii) Casual vacancy

According to **section 139(8)** of the Companies Act, 2013,

(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the CAG within 30 days.

(2) In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.

In case, XYZ Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy:

(a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Past Paper May 2023**3 Marks**

Que 8: SSR & Co. (Statutory Auditors) while conducting audit for financial year 2021-22, find out some manipulative entries in books of accounts of ASR Ltd. Auditors told the MD that internal control system of company is not reliable. The Board of Directors of ASR Ltd. them to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. The Company offered them a fee of ₹10 lakh plus taxes for this assignment for betterment of company. But Statutory Auditor refused to take the assignment. What are the consequences if they accept this assignment?

Ans: According to **section 144 of the Companies Act, 2013**, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the Audit Committee, as the case may be. But such services shall not include designing and implementation of any financial information system. In the said instance, the Board of directors of ASR Ltd. requested its Statutory Auditors, SSR & Co. to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditors accept the assignment, following penal provisions as specified in **section 147** of the Companies Act, 2013 will be levied:

Consequences as regards to Audit firm Liability of Audit firm [Section 147(5)]

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under **section 447**.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Mtp, Sept 24**3 Marks**

Que 9: Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:

(i) Chintamani is a practicing Chartered Accountant, and his spouse, Chitralekha, holds securities of Nagmani Ltd. valued at a face value amount of ₹80,000 (with a market value of ₹50,000). The directors of Nagmani Ltd. are considering the appointment of Chintamani as an auditor for the company.

(ii) Mani, the real sister of Mr. Priyanshu, a Chartered Accountant, holds the position of CFO at Parivar Ltd. The directors of Parivar Ltd. are considering the appointment of Mr. Priyanshu as an auditor for the company.

Ans: (i) As per **section 141(3)(d)(i) of the Companies Act, 2013, an auditor 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.

Further the proviso provides that, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of 1,00,000.

In the present case, Chitrlekha (spouse of Chintamani, the auditor), is having securities of Nagmani Limited having face value of 80,000, which is within the prescribed limits under the proviso to section 141(3)(d)(i). Therefore, Chintamani will be eligible to be appointed as an auditor of Nagmani Limited.

(ii) As per **section 141(3)(f), an auditor is disqualified to be appointed** as an auditor if a person who's relative is a director or is in the employment of the company as a director or a Key Managerial Personnel. In the instant case, since Mani, real sister of Mr. Priyanshu (Chartered Accountant) is the CFO (a KMP) of Parivar Ltd.; hence, Mr. Priyanshu will be disqualified to be appointed as an auditor in the said company.

Mtp, Jan 25

Que 10:The auditor of ABC Limited (not a government company) has resigned on 31st December, 2023, while the Financial year of the company ends on 31st March, 2024. Explain how such an auditor shall be appointed, as per the provisions of the Companies Act, 2013.

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 Annual General Meeting (AGM), in case of a company or 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 three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Mtp, Jan 25

Que 11: Examine the following situations in the light of the Companies Act, 2013:

(i) Mr. Prem, a Chartered Accountant, has been appointed as an auditor of A Limited in the Annual General Meeting of the company held in September 2023, in which he accepted the assignment. Subsequently, in January 2024 he joined as a partner in the consultancy firm where Mr. Ajay is also a partner. Mr. Ajay is also working as a Finance Executive of a Limited.

(ii) Mr. Tom, a practicing Chartered Accountant, holds securities in B Limited with a face value of ₹1,00,000. Considering this, can Mr. Tom be appointed as the auditor of B Limited, or does his holding disqualify him from the role?

Ans: (i) **Section 141(3)(c)** of the Companies Act, 2013 prescribes that **any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company.** Section 141(4) provides where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in section 141(3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

In the present case, Mr. Prem, an auditor of A Limited, joined as partner with consultancy firm where Mr. Ajay has become a partner and Mr. Ajay is also the Finance executive of A Limited. Hence, Mr. Prem has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of A Limited.

(ii) As per **section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds 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.

In the present case, Mr. Tom is holding security of ₹ 1,00,000 in the B Limited, therefore, he is not eligible for appointment as an auditor of B Limited.

Past Paper May 2022/ Rtp Jan 25

5 Marks

Que12: HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause that fee to be mutually decided. However, the remuneration was not finalized. Directors of the company seeks your advice for, provisions related to remuneration of directors¹ as per the provisions of the Companies Act, 2013.

Ans: **Section 142** of the Companies Act, 2013, provides for remuneration of auditors.

According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by the HD Software Private Limited in general meeting or in such manner as the company in general meeting may determine. **Section 143 (3)**.

MTP2 Jan 25

Que 13: Mr. Ramchandra is a partner and in- charge (and certifies financial statements) of A & Associates. The firm is appointed as an auditor firm of Badri Limited (listed company). Mr. Ramchandra retires from A & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/24. In the general meeting of Badri Limited held on 15/06/24, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Badri Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company?

Ans: According to section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that –

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

As per Explanation II in Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014, if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here, Mr. Ramchandra has retired from A & Associates and joined Gupta & Gupta Firm. Mr. Ramchandra was a partner, in- charge Associates (and certifies the financial statement of the company) in A & Associates. He retires from A & Associates and joins Gupta & Gupta firm.

As per the facts of the question and provisions of law, Gupta & Gupta Firm will also be ineligible, to be appointed as auditor of Badri Limited (listed company) for a period of 5 years.

Chapter 11: Companies Incorporated Outside India

Study Material

Que 1: DEJY is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, answer the following:

(i) Whether branch office will be considered as a company incorporated outside India.

(ii) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.

Ans- (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.

Further, branch offices are generally considered as reflection of the Parent Company office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

(ii) Under **section 380(1)** of the Companies Act, 2013 every foreign company shall, **within 30 days of the establishment of place of business in India**, deliver to the Registrar for registration the following documents:

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

(1) personal name and surname in full;

(2) any former name or names and surname or surnames in full;

(3) father's name or mother's name or spouse's name;

(4) date of birth;

(5) residential address;

(6) nationality;

(7) if the present nationality is not the nationality of origin, his nationality of origin;

(8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)

(9) income-tax permanent account number (PAN), if applicable;

(10) occupation, if any;

(11) whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);

(12) other directorship or directorships held by him;

(13) Membership Number (for Secretary only); and

(14) e-mail ID.

- (d) the name and address or the names and address of one or more person's resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- (g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- (h) any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Study Material

Que 2: Galilio Ltd. is a foreign company in Germany, and it has established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached along with the financial statements by the foreign company.

Ans- Preparation and filing of financial statements by a foreign company:

According to **section 381** of the Companies Act, 2013:

- (i) Every foreign company shall, **in every calendar year,—**
 - (a) **make out a balance sheet and profit and loss account** in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, **and**
 - (b) **deliver a copy of those documents to the Registrar.** According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with **Schedule III or as near thereto as possible for each financial year including:**
 - (1) documents that are required to be annexed should be in accordance with **Chapter IX i.e. Accounts of Companies.**
 - (2) The **documents relating to copies of latest** consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.
- (ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of **clause (a) of section 381(1) shall not apply, or shall apply** subject to such exceptions and modifications as may be specified in notification in that behalf.
- (iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. **[Section 381 (2)]**
- (iv) **Every foreign company shall send to the Registrar along with the documents** required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in **section 381(1)** is made.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall file with the Registrar, along with the financial statement, in **Form FC-3** with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

According to the Companies (Registration of Foreign Companies) Rules, 2014, 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 as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it **does not have other place of business in India.**

(v) According to the Companies (Registration of Foreign Companies) Rules, 2014,

(a) Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely: -

(1) Statement of related party transaction

(2) Statement of repatriation of profits

(3) Statement of transfer of funds (including dividends, if any) The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

(b) All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

RTP May 2018

Que 3: As per provisions of the Companies Act, 2013, define the status of Hillways Ltd, a Company incorporated in London, which has a share transfer office at Mumbai?

Ans-In terms of the definition of a foreign company under **section 2 (42)** of the Companies Act, 2013 a "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 **section 386** of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, the status of Hillways Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India.

RTP Nov 2021

Que 4: Tokushia Motors Ltd. was incorporated in Japan. Its share capital is held by the following persons

Citizens of India – 10%

Indian Companies– 40%

The company has opened its representative office in Mumbai on 15th January, 2021, in order to receive orders from the Indian Market and make available the delivery of Japanese luxury cars to the Indian purchasers.

The company was not aware of the Indian Company Law, hence could not file the required documents to the Registrar. The company could file all the required documents only on 28th February, 2021.

Based on the above facts, answer the following questions:

(i) Whether the provisions of Chapter XXII of the Companies Act, 2013 are applicable on Tokushia Motors Ltd?

(ii) What documents are required to be filed by Tokushia Motors Ltd to the Registrar of Companies?

(iii) By what time all the requisite documents shall be filed?

Ans- (i) **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.

In the given case, although the company was incorporated in Japan, however its share capital of not less than 50% is held by the Indian citizens and Indian companies, hence in terms of **section 379(2)** all the provisions pertaining to Chapter XXII of the Companies Act, 2013, shall be applicable on it.

(ii) In terms of **section 380(1)** every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration-

- (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company containing such particulars as may be prescribed;
- (d) the name and address or the names and address of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- (g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- (h) any other information as may be prescribed.

Further its **sub-section (3)** provides that where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

(iii) In the given, case the company had established its representative office in India on 15.01.2021, it was required to file the documents latest by 14.02.2021 with the Registrar.

MTP2 May 2023

Que 5: (i) Search & Find Pte. Ltd, incorporated in Singapore. The Company sells its goods through electronic mode on the e-commerce platforms in India, however, it does not have any branch or office in India. Is the Company required to submit the documents as required under Section 380 of the Companies Act, 2013.

(ii) Arica is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, answer the following:

(1) Whether branch office will be considered as a company incorporated outside India.

(2) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.

Ans: (i) Yes, **as per 2(42) of the Companies Act, 2013**, 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 shall be considered as a foreign company.

Accordingly, as Search & Find Pte. Ltd, is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under **Section 380 of the Companies Act, 2013**.

(ii) (1) 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.

Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

(2) Under **section 380(1)** of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:

- (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company.
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company containing their respective details as per the rules.
- (d) the name/s and address/s of one or more person's resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- (g) declaration that none of the directors of the company / the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- (h) any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

MTP2 Sept 2024

3 Marks

Que 6: Shaltom Ltd, an international corporation headquartered outside Japan, is interested in expanding its investor base and thus is planning to issue a prospectus for the subscription of its securities to potential investors in India. However, the company has not yet established a physical place of business within India. As a consultant for Shaltom Ltd, you have been asked to provide guidance on the legal procedures and compliance requirements that the company must follow to issue this prospectus in India.

Ans: As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

Accordingly, the Shaltom Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

Chapter 12: The Limited Liability Partnership Act, 2008

Mtp 1 Nov 2018, Mtp 1 May 2019, Mtp 2 May 2021, Rtp May 2018

5 Marks

Que 1. Differentiate between a Limited Liability Partnership and Limited Liability Company.

Ans:

Basis	LLP	Limited Liability Company
Regulating Act	The LLP Act, 2008	The Companies Act, 2013.
Members/Partners	The persons who contribute to LLP are known as partners of the LLP	The persons who invest the money in the shares is known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/ partners	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals
Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
Minimum number of directors/ designated partners	Minimum 2 designated partners	Pvt. Co. – 2 directors Public co. – 3 directors

Mtp 1 Nov 2019, Mtp 2 Nov 2021, Mtp 2 May 2022, Mtp 2 May 2023, Rtp Nov 2020, Rtp May 2021

5 Marks

Que 2. What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in an LLP?

Ans: Designated Partner [Section 2(i)]: "Designated partner" means any partner designated as such pursuant to section 7 of the LLP Act, 2008.

According to section 7:

- (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
- (iii) Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one year.

MTP 1 MAY 2020, MTP 1 MAY 2021

5 Marks

Que 3. Enumerate the circumstances in which LLP may be wound up by Tribunal.

Ans: Circumstances in which LLP may be wound up by Tribunal (Section 64 of the LLP Act, 2008):

An LLP may be wound up by the Tribunal:

- (a) if the LLP decides that LLP be wound up by the Tribunal;
- (b) if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- (c) if the LLP is unable to pay its debts;
- (d) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (e) if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- (f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Mtp 1 Nov 2020, Mtp 1 Nov 2021, Mtp 1 May 2022, Mtp 2 Nov 2022, Mtp 1 May 2023, Rtp May 2022, Past Paper May 2019 **5 Marks**

Que 4. "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

Ans: LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (**Section 26 of the LLP Act, 2008**). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Mtp 1 Nov 2022, Rtp May 2023

5 Marks

Que 5. What is Small Limited Liability Partnership as per Limited Liability Partnership (Amendment) Act, 2021?

Ans: "Small Limited Liability Partnership [Section 2(ta) of the Limited Liability Partnership Act, 2008]: It means a Limited Liability Partnership—

- (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- (iii) which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

Rtp Nov 2018, Rtp Nov 2021, Past Paper May 2018

5 Marks

Que 6 Differentiate between a LLP and a partnership firm?

Ans:

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
Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
Body corporate	It is a body corporate.	It is not a body corporate,
Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.

Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
Registration	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.
Perpetual succession	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.
Name	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
Liability	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
Mutual agency	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.
Designated partners	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.
Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership
Legal compliances	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
Annual filing of documents	LLP is required to file: (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.
Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
Minor as partner	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

Past Paper Nov 2019**5 Marks**

Que 7. Discuss the conditions under which LLP will be liable and not liable for the acts of the partner.

Ans: Conditions under which LLP will be liable [Section 27(2) of the LLP Act, 2008] The LLP is liable if a partner of an LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority. **Conditions under which LLP will not be liable [Section 27(1) of the LLP Act, 2008]**

An LLP is not bound by anything done by a partner in dealing with a person if—

- (a) the partner in fact has no authority to act for the LLP in doing a particular act; and
- (b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Past Paper Jan 2021**(5 Marks)**

Que 8. State the circumstances under which an LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008.

Ans: As per **Section 30** of the Limited Liability Partnership Act, 2008, LLP and its Partners may face unlimited liability in case of fraud. According to this section, the liability arises, in the event of an act carried out by an LLP or any of its partners –

- with intent to defraud creditors of the LLP,

- or any other person, or
- for any fraudulent purpose.

The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

Where LLP, Partner or employee of LLP has conducted the affairs of the LLP in fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or employee shall be liable to pay compensation to any such person who has suffered any loss by reason of such conduct.

Mtp Jan 2025

Que 9: Define the term 'Financial Year' as per the provisions of the Limited Liability Partnership Act, 2008.

Ans: According to **section 2(1)(l) of the Limited Liability Partnership Act, 2008, "Financial year"**, in relation to a Limited Liability Partnership (LLP), means the period from the 1st day of April of a year to the 31st day of March of the following year.

Mtp Jan 2025

Que 10: Kishore, Kanshik, Yuvan and Bhora were partners in ABC & Associates LLP. Yuvan resigned from the firm effective from 11th November, 2024 but this was not informed to the Registrar of Companies by the Limited Liability Partnership or Yuvan. Whether Yuvan will still be liable for the loss of firm of the transactions entered after 11th November, 2024? Give your answer as per the provisions of the Limited Liability Partnership Act, 2008.

Ans: According to **section 24(3)**, where a person has ceased to be a partner of an LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless:

- (a) the person has notice that the former partner has ceased to be a partner of the LLP; or
- (b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Yuvan will still be liable for the loss of firm of the transactions entered after 11th November, 2024.



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Chapter 1: The General Clauses Act, 1897

Study Material

Que 1: What is "Immovable Property" under the General Clauses Act, 1897?

Ans: According to Section 3(26) of the GenAccording to 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.

For example, trees are immovable property because trees are benefits that arise out of the land and are attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

Study Material/ MTP1 Nov 2018/ MTP Nov 2020

4 Marks

Que 2: As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?

Ans: Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue of whether a whole time KMP of a holding company can be appointed in more than one subsidiary company or can be appointed in only one subsidiary company. It can be noted that Section 13 of the General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Study Material/ Mtp May 2020/ Past Paper Nov 2018

4 Marks

Que 3: Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2022. Referring to provisions of the General Clauses Act, 1897 and the Companies Act, 2013, advice:

- (i) The dates during which Komal Ltd. is required to pay the dividend?
- (ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to an unpaid dividend account?

Ans:As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(i) Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and the last 30th day, i.e. 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).

(ii) Transfer of unpaid or unclaimed dividend: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, 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 or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called

the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2022 to 3rd November, 2022 (both days inclusive)

Study Material/ MTP Nov 2019/ MTP Nov 2020

4 Marks

Que 4: 'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897

Ans: In Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

Mtp1 Nov 2018/ Mtp1 May 2019/ Mtp1 May 2022/ Past Paper Nov 2019/ Past Paper Nov 2020/ Past Paper Jan 2021/ Mtp Jan 2025

4 Marks

Que 5: What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897.

Ans: "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.

MTP2 May 2022

4 Marks

Que 6: Examine the validity of the following statements with reference to the General Clauses Act, 1897:

Board of Directors of Sabarwal Construction Private Limited authorised by-passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the directors of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorised Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words?

Ans: As per the provisions of section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Mr. Munim was appointed in board meeting of Sabarwal Construction Private Limited to appoint five employees for accounts department of company. Mr. Munim appointed five employees. After one month, he issued the order of dismissal to one of those five employees. That employee filed an application in the court challenging the validity of dismissal order with the words that Mr. Munim was authorised only for appointment of employees not for dismissal.

On the basis of above provisions and facts of the case, Mr. Rupal was not correct with his words because as per the General Clauses Act, 1897, power to appoint includes power to suspend or dismiss. Hence, Mr. Munim has power to dismiss Mr. Rupal.

Mtp2 May 2023/ Past Paper Jan 2021

3 Marks

Que 7: The Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

Ans: According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.

Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both. Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

Past Paper Nov 2018/ Past Paper May 2022/ Past Paper May 2023

4 Marks

Que 8: Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897.

Ans: According to Section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

In State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under section 6 of the Act.

Past Paper Nov 2019/ Past Paper Nov 2020

3 Marks

Que 9: Define the term "Affidavit" under the General Clauses Act, 1897.

Ans: "Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. There are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

Past Paper May 2022

4 Marks

Que 10: The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following:

- (i) Is it required for MCA to publish a draft of the proposed Rules?
- (ii) In case of any irregularities in the publication of the draft, can it be questioned?
- (iii) Is MCA entitled to make suitable changes in the draft?
- (iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft?

Ans: The answer can be given in terms of section 23 of the General Clauses Act, 1897. Following shall be the answers in the light of the given information and the relevant legal provisions:

- (i) Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.
- (ii) No, in case of any irregularities in the publication of the draft, it cannot be questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws

has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.

(iii) Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.

(iv) No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.

Mtp1 Sept 2024

Que 11: In 2022, the Central Government enacted the "Digital Communications Act" to regulate and manage digital communications across the country. The Act provides specific duties and responsibilities for the Director of Digital Communications, including the oversight of digital infrastructure, enforcement of regulations, and ensuring compliance with data protection standards.

In 2023, the Director of Digital Communications, Mr. Arjun Patel, was appointed to lead the implementation of this Act. However, in January 2024, Mr. Patel took a medical leave of absence for six months. During his absence, Ms. Priya Sharma, the Deputy Director of Digital Communications, was lawfully assigned to perform the duties of the Director.

While Mr. Patel was on leave, a major data breach incident occurred involving a significant violation of the Digital Communications Act. Ms. Sharma took immediate action to investigate the breach, enforce penalties, and implement new compliance measures to prevent future incidents.

The actions taken by Ms. Sharma, while performing the duties of the Director, led to a legal challenge. The opposing party argued that only the Director, as specified in the Act, had the authority to enforce such penalties and measures, and that Ms. Sharma's actions were not valid.

Analyse the validity of Ms. Priya Sharma's actions in the context of the General Clauses Act, 1897, considering the provisions related to 'Official chiefs and subordinates.

Ans: Official Chiefs and subordinates

According to [section 19 of the General Clauses Act, 1897, a law relative to the chief or superior of an office](#) shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

In the instant case, Ms. Priya, the Deputy Director of Digital Communications, was lawfully assigned to perform the duties of the Director. Hence, the actions taken by Ms. Priya Sharma were valid.

Rtp Jan 25

Que 12: The Parliament recently passed the Environment Protection Amendment Act, 2024, to strengthen regulations on industrial waste disposal. The Act specified the commencement date as 1st September, 2024. The President gave assent to the Act on 15th July, 2024.

Green Earth Limited, an industrial company, is uncertain about when the provisions of the Environment Protection Amendment Act, 2024, will start to apply. The company's legal team has raised question on whether they need to immediately comply with the new regulations or if they have a grace period until the commencement date. Give your answer in reference to the provisions of the General Clauses Act, 1897.

Ans: According to [section 5 of the General Clauses Act, 1897, where any Central Act has not specifically](#) mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

In the given question, the Environment Protection Amendment Act, 2024, received assent of President of India on 15th July, 2024. The commencement date is prescribed as 1st September 2024. Accordingly, the Environment Protection Amendment Act, 2024, shall come into enforcement 1st September, 2024.

Chapter 2: Interpretation of Statutes

Study Material, Past Paper Dec 2021

3 Marks

Que 1. Explain the rule in 'Heydon's Case' while interpreting the Statutes quoting an example.

Ans: Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case.

This rule enables, consideration of four matters in constituting an Act:

- (1) what was the law before making of the Act,
- (2) what was the mischief or defect for which the law did not provide,
- (3) what is the remedy that the Act has provided, and
- (4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible to it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions. However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [*CIT v. Sodra Devi (1957) 32 ITR 615 (SC)*].

Study Material, Mtp 1 May 2019, Mtp 1 May 2021, Mtp 1 Nov 2022

3 Marks

Que 2. Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard?

Ans: Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather than just or unreasonable. However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

Study Material, Mtp 2 May 2021, Mtp 2 Nov 2021, Mtp 2 May 2023, Past Paper May 2022, Mtp Jan 2025 3 Marks

Que 3. (i) What is the effect of proviso? Does it qualify the main provisions of an Enactment?

(ii) Does an explanation added to a section widen the ambit of a section?

Ans: (i) Normally a Proviso is added to a section of an Act to accept something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. [*Ram Narain Sons Ltd. v. Commissioner of Sales Tax AIR (1955) S.C. 765*]

(ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonize and clear up any ambiguity in the main section. Something may be added to or something

may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

Study Material, Mtp 1 May 2020, Rtp Nov 2022

3 Marks

Que 4. How will you interpret the definitions in a statute, if the following words are used in a statute?

(i) Means (ii) Includes

Give one illustration for each of the above from Statutes you are familiar with.

Ans: Interpretation of the words "Means" and "Includes" in the definitions The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same. When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section. But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example—Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word "means" suggests an exhaustive definition.

Definition of Whole-time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole-time employment of the company. The word "includes" suggests an extensive definition. Other directors may be included in the category of the whole-time director.

Study Material, Mtp 2 May 2023, Rtp May 2022, Rtp May 2023

3 Marks

Que 5. When can the Preamble be used as an aid to interpretation of a statute?

Ans: While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails. The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

Study Material, Mtp 2 Nov 2018, Mtp 2 May 2019, Mtp 1 Nov 2019, Mtp 1 Nov 2021, Past Paper Nov 2018 **4 Marks**

Que 6. Explain how 'Dictionary Definitions' can be of great help in interpreting/ constructing an Act when the statute is ambiguous.

OR

When can the 'dictionary definitions' be used as an external aid for interpretation of any of the word or expression of an enactment?

Ans: Dictionary Definitions: First we refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in parametria will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.

Mtp 1 Nov 2018, Mtp 1 May 2019

4 Marks

Que 7. How far are (i) title and (ii) preamble in an enactment helpful in interpreting any of the parts of an enactment?

Ans: (i) Title: An enactment would have what is known as 'Short Title' and also a 'Long Title'. The short title merely identifies the enactment and is chosen merely for convenience. The 'Long title' describes the enactment and does not merely identify it. The Long title is a part of the Act and, therefore, can be referred to for ascertaining the object and scope of the Act.

(ii) Preamble: It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to be remedied by it. The preamble like the long title can legitimately be used for construing it. However, the preamble cannot override the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

Mtp 1 May 2020, Mtp 1 May 2022, Mtp 2 Nov 2022, Past Paper Nov 2020

3 Marks

Que 8. 'The meaning of a word is to be judged by the company it keeps'. Explain the concept of 'Noscitur A Sociis'.

OR

"Associate words to be understood in common sense manner." Explain this statement with reference to rules of interpretation of statutes.

Ans: Associated Words to be Understood in Common Sense Manner: When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of 'Noscitur A Sociis' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e., akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be borne in mind that noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. (Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67).

Rtp May 2018, Rtp May 2020, Past Paper Nov 2020

3 Marks

Que 9. Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.

Ans: Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

Distinction between Proviso, exception and saving Clause

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Proviso	Exception	Saving Clause
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Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing
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Rtp Sept 2024

Que 10: Imagine you are a legal advisor for a company drafting a new contract. One of the clauses in the contract states: "Notwithstanding anything contained in any other provisions of this agreement, the company reserves the right to terminate the agreement without notice if there is a breach of confidentiality by the employee." Explain to the management of the company the meaning of a non-obstante clause in legal documents and its effect on overriding other provisions with reference to decided case law.

Ans: A clause that begins with the words "notwithstanding anything contained" is called a non-obstante clause. Unlike the "subject to" clause, the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein. (K. Parasurammaiah v. Pakari Lakshman AIR 1965 AP 220)

In conclusion, a non-obstante clause plays a crucial role in legal drafting by ensuring that the specified provision prevails over conflicting provisions, thereby enhancing legal certainty and consistency in judicial interpretation.

Rtp Jan 2025

Que 11: At the time of interpreting a Statute what will be the effect of 'Usage' or 'customs and Practices'?

Ans: Effect of usage: Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

- (i) 'Optima Legum interpres est consuetudo' (the custom is the best interpreter of the law); and
- (ii) 'Contemporanea Expositio est optima et fortissima in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written. Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

Chapter 3: The Foreign Exchange Management Act, 1999

Study Material

Que 1: 'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of the Dubai branch?

Ans: Printex Computer being a Singapore based company would be a person resident outside India [(Section 2(w)). Section 2 (u) defines 'person' under clause (viii) thereof, as 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 clause (i) to (vi). Accordingly, the Printex unit in Pune, being a branch of a company would be a 'person'. Section 2(v) defines a person resident in India. Under clause (iii) thereof a person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it would be a 'person resident in India.' However, Dubai Branch though not owned is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India.

Study Material, Mtp Jan 25

Que 2: Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

- (i) M requires U.S. \$5,000 for remittance towards hiring charges of transponders.
- (ii) P requires U.S. \$2,000 for payment related to call back services of telephones.

Ans: Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions. Accordingly,

- (i) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.
- (ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US \$ 2,000 for the said purpose.

Study Material/ MTP2 May 2019

Que 3: Suresh resided in India during the Financial Year 2020-2021. He left India on 15th July 2021 for Switzerland to pursue higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2021-2022 and 2022-2023?

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

Ans: Residential Status: 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 preceding financial year [Section 2(v)(i)].

However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period. Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland to pursue higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies. Mr. Suresh will be treated as person reside Residential Status:

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 preceding financial year [**Section 2(v)(i)**]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period. Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'.

RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to talent in India for Financial Year 2021- 2022 till 16th July 2021 and from 17th July 2021, he will be considered as a person resident outside India. However, during the Financial Year 2022-2023, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2021.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI.

Further provision to Para I of Schedule III states that individuals may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Study Material

Que 4: Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

(A) US\$ 120,000 for studies abroad on the basis of estimates given by the foreign university.

(B) Gift Remittance amounting US\$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Ans:(A) Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US \$ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further provision to Para I of Schedule III states that individuals may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US \$ 120,000 is the drawal of foreign exchange, so permission of the RBI is not required.

(B) Gift remittance exceeding US \$ 10,000: Under the provisions of **section 5** of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US \$ 250,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.

MTP2 May 2018

Que 5: Explain the meaning of "Capital Account Transactions" under the Foreign Exchange Management Act, 1999. Examine whether an investment by person resident in India in Foreign Securities is permissible or not under the above Act as Capital Account transactions.

Ans: Meaning of Capital Account Transaction: It means a transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of a person resident outside India, and includes transactions referred to in sub- **section (3) of section 6** of FEMA Act, 1999.

The Reserve Bank of India has formed the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

As per these regulations, capital account transactions may be classified under the following heads.

(1) Permissible capital account transaction of persons resident in India (schedule 1)

(2) Permissible Capital transactions of persons resident outside India (schedule II).

(3) Prohibited capital account transactions.

A person resident in India may enter into any of the following capital account transactions provided the regulations specified by the Reserve Bank of India in respect of such capital account transactions are complied with.

In view of the above, **an investment by person resident in India in Foreign Securities** is permissible capital account transaction.

MTP2 Nov 2018

Que 6: Explain the meaning of the term "Current Account Transaction" and the right of a citizen to obtain Foreign Exchange under the Foreign Exchange Management Act, 1999.

Ans: The term "current account transaction" is defined in **section 2(i)** of Foreign Exchange Management Act, 1999. It means a transaction other than a capital account transaction and includes:

(i) payments due in connection with foreign trade, other current business, services, and short – term banking and credit facilities in the ordinary course of business.

(ii) payments due as interest on loans and as net income from investments.

(iii) remittances for living expenses of parents, spouse and children residing abroad and

(iv) expenses in connection with foreign travel education and medical care of parents, spouse and children.

According to **Section 5** of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Further, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction subject to the provisions of **section 6(2)**.

MTP Nov 2020

Que 7: Milap Limited, a company incorporated in India, has obtained consultancy services from an entity based in France for setting up the software programme in their company. The consideration for such services is required to be paid in foreign currency. The compliance officer of Milap Limited requires your advice regarding threshold limit of remittance that can be made without prior approval of RBI. You as a qualified Chartered Accountant are required to advise the compliance officer considering the provisions of Foreign Exchange Management Act, 1999 and regulations thereunder.

Ans: As per the Foreign Exchange Management Act, 1999 read with Schedule III of the FEMA (Current Account Transactions) Rules, 2000, thereunder, there are various facilities for persons other than individuals which requires the prior approval of RBI for drawal of foreign exchange. One of such facility is remittances exceeding USD 1,000,000 per project for other consultancy services procured from outside India. In the given case, the person (i.e, Milap Limited) obtaining such service from outside India is a body corporate, other than individual and accordingly to above provisions, where the remittances is exceeding the prescribed threshold, there Milap Limited will require to seek prior approval of RBI for drawal of such foreign exchange.

MTP1 May 2022/ MTP2 May 2022

Que 8: Mr. Ashok, a citizen of India, has been working in a company in Chicago, USA, since last 8 years and had been settled there with his family. However, the said company opened its branch in India last year and Mr. Ashok has been deputed there for a duration of 26 months from 25th April, 2020. He remitted an amount of \$ 2,80,000 on 20th December, 2021 to his family in USA. The details of salary earned by him from 25th April, 2020 to 30th November, 2021 are as follows:-

Particulars	\$*
Gross Salary	3,50,000
Contribution to Provident Fund	40,000
TDS as per Income Tax Act, 1961	40,000

* Amount is converted to USD from INR.

You being an expert in Foreign Exchange Matters, kindly advise on the below issues:-

(i) How much excess amount, if any, has been remitted by Mr. Ashok to his family in USA?

(ii) Whether the company in USA in which Mr. Ashok was deputed, can be treated as MNC under FCRA, 2010?

Ans: (i) 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 preceding financial year but does not include a person who has come to or stays in India, for or on taking up employment in India.

As per Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000, For a person who is resident but not permanently resident in India and-

(a) is a citizen of a foreign State other than Pakistan; or

(b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

Fact of the case & Conclusion: Mr. Ashok is a citizen of India working in a company in USA and has been deputed to its branch in India for a duration of 26 months i.e. for not more than 3 years and Mr. Ashok's stay in F.Y. 2020-21 was more than 182 days in India, so, he would be considered as a resident but not permanently resident in India.

Accordingly, he was allowed to remit an amount up to his net salary i.e. \$ 2,70,000 (\$ 3,50,000 - \$ 40,000 - \$ 40,000) while he has remitted an amount of \$ 2,80,000 to his family in USA. Thus, the excess amount remitted by him is \$ 10,000 (\$ 2,80,000 - \$ 2,70,000)

(ii) As per **Explanation to Section 2(1)(g)** of the FCRA, 2010, — a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation, —

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or

(b) carries on business, or otherwise operates, in two or more countries or territories;

Facts: Mr. Ashok has been working in a company in Chicago, USA since last 8 years and the said company opened its branch in India last year.

So, it appears that the said company had been incorporated in USA and operating in USA since a long time and has also started its operations in India by opening a branch in India.

Thus, the company in USA in which Mr. Ashok is deputed, can be treated as MNC under FCRA, 2010 as it is carrying on business or operating in two countries i.e. USA and India, respectively.

Mtp2 May 2023/ Past Paper Dec 2021

Que 9: Mr. Vishwa, an Indian resident, working in Singapore for last ten years. He is currently holding assets and bank balances in Singapore and planning to settle down in India. You being an expert under the FEMA, Mr. Vishwa seeks your advice as to whether he can hold, own, transfer or invest in a foreign currency, foreign security or any immovable property situated outside India as per the Foreign Exchange Management Act, 1999.

Ans: As per **Section 6** of the FEMA, 1999, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Here, in the given case, Mr. Vishwas, an Indian Citizen, who was working in Singapore for ten 10 years, currently planning to settle in India wanted to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India.

Hence in the given case, Mr. Vishwas, earned income through employment or business or vocation when he was outside India. After his settlement in India, he may freely utilize all their eligible assets abroad as well as income

on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank.

RTP May 2018

Que 10: Ms. Ashima daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder in that flat, for which entire proceeds are to be paid by her.

(i) State the provisions of FEMA governing such type of transaction?

(ii) On Applying the relevant provisions, can Mr. Mittal join her daughter in acquiring such a flat in Australia?

Ans: (i) The provisions governing the acquisition and transfer of immovable property outside India.

(1) A person resident in India may acquire immovable property outside India:

(a) By way of gift or inheritance from a person referred to in **sub-section (4)** of Section 6 of the FEMA or referred to in clause (b) of regulation 4 acquired by a person resident in India on or before 8th July, 1947 and continued to be held by him with the permission of Reserve Bank.

(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the foreign exchange management (Foreign Currency accounts by a person resident in India) Regulations 2015.

(c) Jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

(2) A person resident in India may acquire immovable property outside India, by way of Inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provision in force at the time of such acquisition.

(3) A Company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

(ii) In the light of above discussions in 1(c), it is quite clear that Mr. Mittal, a resident in India, can join his daughter who is a resident outside India, in acquiring a Flat at Australia.

RTP Nov 2018

Que 11: Mr. Hillary Benjamin, a citizen of India, left India for employment in U.S.A. on 1st June, 2015. Mr. Hillary Benjamin purchased a flat at New Delhi for 60 lacs in September, 2016. His brother, Mr. Henry Benjamin employed in New Delhi, also purchased a flat in the same building in September 2016 for 65 lacs. Mr. Henry Benjamin's flat was financed by a loan from a Housing Finance Company and the loan was guaranteed by Mr. Hillary Benjamin. Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether purchase of flat and guarantee by Mr. Hillary Benjamin are Capital Account transactions and whether these transactions are permissible.

Ans: Section 2(e) of Foreign Exchange Management Act, 1999 states that 'capital account transactions' means:

(a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India

(b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in **section 6(3)**.

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction. It has also been specifically provided in **section 6(3)(i)** as a capital account transaction.

Guarantee will be considered as a capital account transaction in the following cases:

(1) Guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India.

(2) Guarantee in respect of any liability, debt or other obligation incurred by a person resident outside India. In this case, Mr. Hillary Benjamin, a resident outside India gives a guarantee in respect of a debt incurred by a person resident in India and owed to a person resident in India. Hence, it would appear that guarantee by Mr. Hillary Benjamin cannot be considered as a capital account transaction within the meaning of **Section 2(e)**, particularly because it is a contingent liability.

All capital account transactions are prohibited unless specifically permitted. RBI is empowered to issue regulations in this regard [**Section 6(3)**]. Permissible capital account transactions by persons resident outside India are given in Schedule II to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. According to the said regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.

RTP May 2021

Que 12: A foreign tourist comes to India and he purchases a antiques from a shop. He would like to pay US\$ 30 in cash to the shopkeeper. Comment in the light of the FEMA, whether shopkeeper is permitted to accept foreign currency?

Ans: As per **section 3** of the FEMA, save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

Here in the given case, the foreign tourist wanted to pay foreign currency in cash on purchase of antiques to shopkeeper which as per **section 3**, is not permissible to any person to receive any payment by order or on behalf of any person resident outside India in any manner except received through an authorised person. Therefore, the Shopkeeper cannot accept cash as it will be a receipt otherwise than through Authorised Person except where the shopkeeper has taken a money changers license to accept foreign currency.

Rtp, Jan 25

Que 13: Ravi, an Indian citizen, works as a software engineer for an international company. During the previous financial year (2023-2024), Ravi resided in India for 200 days. However, in April of the current financial year, he accepted a job offer in Canada and left India with a long-term work visa, planning to settle in Canada indefinitely. Analyse the residential status of Ravi for the financial year 2024-2025, as per the provisions of the Foreign Exchange Management Act, 1999.

Ans: As per **section 2(v)** of the Foreign Exchange Management Act, 1999, the term 'person resident in India' means the following entities:

A person who resides in India for more than 182 days during the preceding financial year. The following persons are not persons resident, in India even though they may have resided in India for more than 182 days.

A. A person who has gone out of India or stays outside India for any of the three purposes given below,

B. A person who has come to or stays in India otherwise than for any of the three purposes given below;

Three Purposes

(1) For or on taking up Employment

(2) For carrying on a business or Vacation

(3) For any other purpose in such circumstances as would indicate stay for an uncertain period.

Ravi's Residential Status: Ravi resided in India for more than 182 days in the preceding financial year, which would typically qualify him as a "person resident in India." However, his decision to leave India for long-term employment in Canada changes his status. According to the provision, a person who has left India for the purpose of employment abroad is not considered a "person resident in India" even if they meet the 182-day requirement. Thus, Ravi does not qualify as a resident for the current financial year.