

Chapter 6: The Companies Act, 2013

Section 2(20) Company | Section 2(42) Foreign Company

Question 1:

Mike Limited, a company **incorporated in India**, established a **Liaison office at Singapore**. The question is whether Mike Limited would be called a **Foreign Company** under the **Companies Act, 2013**? [Dec 20 - 3 Marks]

Answer:

As per **Section 2(42)**, a **Foreign Company** means a company **incorporated outside India** having a **place of business in India** and conducting any business activity in India. Since **Mike Limited is incorporated in India** (under Sec. 2(20)) and not outside India, it can be called a **Company** but **cannot be called a Foreign Company**.

Question 2:

Mike LLC, a company **incorporated in Singapore**, established an **office in Pune, India**. The question is whether Mike LLC would be called a **Foreign Company** under the **Companies Act, 2013**. [Nov 22 - 3 Marks]

Answer:

Since **Mike LLC is incorporated outside India** and has a **place of business in India**, it is a **Foreign Company**.

Question 3:

Whether **ACT Ltd.**, a company **incorporated in Singapore** by all Indian citizens and **having a place of business in India**, can be treated as a **foreign company** under the **Companies Act, 2013**. [ACT]

Answer

As per **Section 2(42)**, a **foreign company** is one **incorporated outside India** which also **has a place of business in India** (directly/through agent/physically/electronically) **and conducts business activity in India**. Since **ACT Ltd. is incorporated outside India and has a place of business in India**, it will be treated as a **foreign company**, and the fact that it is incorporated by Indian citizens is **immaterial**.

Question 4:

When a company incorporated outside India shall be considered a **'foreign company'** under **Section 2(42) of the Companies Act, 2013**, and whether the following companies would qualify:

- (i) Company incorporated outside India with a **representative in India receiving orders** from customers.
- (ii) Company incorporated outside India that **holds its Board meetings and general meetings in India**. [ACT]

Answer

As per **Section 2(42)**, a **foreign company** means any company **incorporated outside India** that has a **place of business in India** (directly/through agent/physically/electronically) **and conducts business activity in India**.

- Case (i): Since the **representative receives orders in India**, it amounts to having a **place of business in India**, hence the company **is a foreign company**.
- Case (ii): Merely **holding Board/general meetings in India** does **not constitute a place of business**, hence the company **is not a foreign company**.

Section 2(71): Public Company

Section 2(87): Subsidiary Company

Question: 5

Cross Limited is a company incorporated under the erstwhile Companies Act, **1956**, while **XYZ Private Limited** is a company registered under the Companies Act, **2013**. XYZ Private Limited has issued:

- 1,00,000 **convertible preference shares** (carrying voting rights) of ₹100 each
- 10,00,000 **equity shares** of ₹10 each, fully paid-up.

Cross Limited holds **all the preference shares** and **1,00,000 equity shares** of XYZ Private Limited.

Based on the above facts, **examine** the following:

1. Whether the provisions of the Companies Act, 2013 are applicable to Cross Limited?
2. Whether XYZ Private Limited shall be regarded as a **public company** under the Companies Act, 2013? [MTP May 24 (2) – 5 Marks]

Answer:

1. Applicability of Companies Act, 2013:

As per **Section 1 (4)**, the Companies Act, 2013 applies to all companies incorporated under this Act or under any previous company law (including the Companies Act, 1956).

Hence, **Cross Limited is governed by the Companies Act, 2013.**

2. Status of XYZ Private Limited: Under **Section 2(87)**, a company is considered a **subsidiary** if another company controls **more than 50% voting power** in it.

- XYZ has total voting shares worth ₹2 crore (₹1 crore preference + ₹1 crore equity).
- Cross Limited holds ₹1 crore preference + ₹10 lakh equity = ₹1.10 crore → **more than 50%**.
Thus, **XYZ is a subsidiary of Cross Limited.**

Now, per **Section 2(71)**, if a private company is a subsidiary of a **public company**, it shall be **deemed to be a public company** under the Act.

So, **XYZ Private Limited is deemed to be a public company**, even if it remains private in its articles.

Question: 6

The question asks whether the **Companies Act, 2013** is applicable to the following entities:

1. **HDFC Bank Ltd.** (incorporated under the Companies Act, 1956)
2. **HDFC Life Insurance Co. Ltd.** (incorporated under the Companies Act, 1956)
3. **National Thermal Power Corporation Ltd.** (Electricity company incorporated under the Companies Act, 1956)
4. **Reliance Industries Ltd.** (incorporated in 1973)
5. **Tata Steel Ltd.** (incorporated in 1907)
6. **Infosys Ltd.** (incorporated in 1981) **[ACT]**

Answer:

As per **Section 2(20)**, *company* means a company incorporated under the **Companies Act, 2013** or any **previous company law**. Hence, the **Companies Act, 2013** applies to **all the above companies**. However, in the case of **banking, insurance, and electricity companies**, the Act applies **except where inconsistent** with the **Banking Regulation Act, 1949, Insurance Act, 1938 / IRDA Act, 1999, and Electricity Act, 2003** respectively.

Question: 7

- **BC Pvt Ltd** → Holding company
- **KL Pvt Ltd** → Subsidiary of BC Pvt Ltd
- **PQ Pvt Ltd** → Target company

Case 1:

- **PQ's Paid-up Share Capital = ₹30 Lakhs = 3,00,000 equity shares (₹10 each fully paid)**
- **Shareholding:**
 - BC Pvt Ltd = **90,000 shares**
 - KL Pvt Ltd = **70,000 shares**

Whether PQ Private Limited is a subsidiary of BC Private Limited.

Case 2:

- **PQ's Paid-up Share Capital = ₹30 Lakhs = 3,00,000 equity shares (₹10 each fully paid)**
- **Shareholding:**
 - KL Pvt Ltd = **1,60,000 shares**
 - BC Pvt Ltd = **0 shares**
 - **KL is already a subsidiary of BC**

Whether PQ Private Limited is a subsidiary of BC Private Limited. **[Dec 21 – 3 Marks]**

Answer: (Sec. 2(87))

- **Case 1:** Since **BC (90,000) + KL (70,000) = 1,60,000 (More than 50% of 3,00,000 equity shares)**, **PQ Pvt Ltd is a subsidiary of BC Pvt Ltd.**
- **Case 2:** Even though **BC holds no shares, KL (its subsidiary) holds 1,60,000 (More than 50%)**. By law, **PQ Pvt Ltd is still a subsidiary of BC Pvt Ltd** since Control via another subsidiary is also considered.

Question: 8

- Paid-up Share Capital of Ram Pvt Ltd = ₹10 crores
 - 7,00,000 Equity Shares of ₹100 each
 - 3,00,000 Preference Shares of ₹100 each
- Lakhan Pvt Ltd holds:
 - 3,00,000 Equity Shares
 - 3,00,000 Preference Shares
- Issue: Whether Ram Pvt Ltd is a subsidiary of Lakhan Pvt Ltd under the Companies Act, 2013? (MTP Oct 21 - 4 Marks)

Answer:

- In this case, it is **not specified** that preference shares carry voting rights → assume **no voting rights**.
- Voting power is therefore **only based on equity**.
- Lakhan Pvt Ltd holds 3,00,000 equity shares out of 7,00,000 = less than 50%.
- Hence, Ram Pvt Ltd is **NOT** a subsidiary of Lakhan Pvt Ltd.

Question: 9

- ABC Limited had a paid-up capital ₹1,00,000 as on 31.03.2023 (10,000 equity shares of ₹10 each).
- In June 2023, ABC Limited issued 10,000 additional equity shares (fully subscribed).
- After issue → Total capital = ₹2,00,000 (20,000 equity shares of ₹10 each).
- Out of these, 5,000 shares were issued to XYZ Pvt. Ltd.
- XYZ Pvt. Ltd. is the holding company of PQR Pvt. Ltd. by having control over Board composition.
- Claim: PQR Pvt. Ltd. asserts that it becomes a subsidiary of ABC Ltd. as being the subsidiary of its subsidiary (XYZ Pvt. Ltd.).

What is the relationship between ABC Ltd. & XYZ Pvt. Ltd. under the Companies Act, 2013? (June 24 - 7 Marks)

Answer:

- Here, XYZ Pvt. Ltd. holds only 25% in ABC Ltd. → not a subsidiary.
- Hence, PQR Pvt. Ltd. cannot claim to be a subsidiary of ABC Ltd.
- As per Section 2(6): An Associate Company is one where another company has significant influence (at least 20% voting power).
- Therefore, ABC Ltd. & XYZ Pvt. Ltd. have an Associate Company relationship.

Question: 10

- Popular Products Ltd.: Incorporated in India, total share capital = ₹20 crores.
- Share capital comprises 20 lakh equity shares of ₹100 each.
- Shareholding in Popular Products Ltd.:
 - Delight Products Ltd. → 2,50,000 shares
 - Happy Products Ltd. → 3,50,000 shares
 - Cheerful Products Ltd. → 2,50,000 shares
- Jovial Ltd. is the holding company of all the above three companies (Delight, Happy, Cheerful).

Can Jovial Ltd. be termed as a subsidiary company of Popular Products Ltd. under the Companies Act, 2013?

What if Jovial Ltd. controls the composition of directors of Popular Products Ltd. [MTP I Sep 24 – 3 Marks]

Answer:

- Here, Jovial Ltd. + subsidiaries hold only 8,50,000 shares i.e. less than one-half of its total voting power.
- However, if Jovial Ltd. controls the composition of directors of Popular Products Ltd., it qualifies as a holding company of Popular Products Ltd.
- Therefore, Jovial Ltd. is a Holding Company, not a Subsidiary of Popular Products Ltd.

Question: 11

- Darshan Photographs Pvt. Ltd. → Paid-up capital ₹1 crore consisting of:
 - 50,000 Equity Shares of ₹100 each.
 - 50,000 Preference Shares of ₹100 each (no voting rights).
- Shadow Evening Pvt. Ltd. holds:

- **Case (a):** 25,000 Equity Shares.
- **Case (b):** 25,000 Equity Shares + 5,000 Preference Shares (without voting rights).

Is **Darshan Photographs Pvt. Ltd.** a **subsidiary** of **Shadow Evening Pvt. Ltd.** under **Section 2(87)** of the **Companies Act, 2013** in each case? (MTP 1 June 24 - 7 Marks)

Answer:

- **Case (a):** Shadow Evening holds **25,000 / 50,000 equity shares = 50% voting power.**
 - Requirement is **more than one-half** voting power.
 - **Not a subsidiary.**
- **Case (b):** Preference shares have **no voting rights**, so even with 5,000 preference shares, Shadow Evening still holds only **50% voting power.**
 - **Not a subsidiary (answer remains the same).**

Section 2(6): Associate Company

Question: 12

ABC Ltd. allotted **equity shares with voting rights worth ₹15 crores** to **XYZ Ltd.** and also issued **Non-Convertible Debentures (NCDs) worth ₹40 crores** during FY 2019–20. After this, the **total paid-up equity share capital = ₹100 crores** and **NCDs = ₹120 crores.** The question asks whether **ABC Ltd. and XYZ Ltd.** can be regarded as **Associate Companies** under the **Companies Act, 2013.** [Dec 20 4 Marks]

Answer:

Since **XYZ Ltd. holds only 15% of equity (₹15 crores out of ₹100 crores)** and **NCDs (₹40 crores)** are **not considered** for voting power, **ABC Ltd. and XYZ Ltd. cannot be called Associate Companies** under the Act.

Question: 13

The **paid-up equity share capital** of **ACD Ltd.** is **Rs 80 crores** and **preference share capital** is **Rs 20 crores.** **B Ltd.** holds **equity shares worth Rs 15 crores** and **preference shares worth Rs 10 crores** in **ACD Ltd.** The question asks whether **B Ltd. can be considered an Associate Company** of **ACD Ltd.** [May 25- 3 Marks]

Answer:

Preference shares (Whether Convertible or Non-Convertible) are excluded from voting calculation. **B Ltd. holds only 18.75% of equity shares** ($[(15/80) \times 100]$), which is **less than 20%**, so **B Ltd. cannot be considered an Associate Company** of **ACD Ltd.**

Section 2(68): Private Company

Question: 14

- **Company:** ABC Limited
- **Total Members = 245**
 - **Directors & Relatives = 190**
 - **Employees = 25**
 - **Ex-employees = 20 (Shares were allotted when they were employees)**
 - **Others (including 10 joint holders) = 20**

Whether **reduction in number of members** is required for conversion into a **Private Company** under **Section 2(68)?** [Jan 21 – 4 Marks]

Answer:

As per **Sec. 2(68)**, employees/ex-employees are excluded, and joint holders counted as one. Thus, **total members = 200**, which is within the limit. Therefore, **no reduction in members is required** for conversion into a private company.

Question: 15

Jagannath Oils Ltd., a public company with 220 members, plans to convert into a private company. **25 of these members** were employees from **1st April 2006 to 28th June 2016** and were **first allotted shares on 1st July 2007,** but **sold them on 1st August 2016.** Later, they **re-acquired shares on 1st December 2016,** and have held them since. You are required to examine:

(I) Whether the company must reduce members for conversion.

(II) Would your answer differ if they were employees until 28th June 2017? [MTP Nov 21-4 Marks]

Answer:

- **Yes, reduction needed** — since **25 ex-employees** got shares on **1st Dec 2016**, i.e., **after their employment ended on 28th June 2016**, they **do not qualify for exclusion** and are **counted in the 200-member limit**.
- **No reduction needed** — if they were **employees till 28th June 2017**, they would have acquired shares **during employment**, hence they **qualify for exclusion** and are **not counted** in the 200 limit.

Section 2(85): Small Company

Question: 16

Oakwood Private Limited is the **holding company** of **Silveroak Private Limited**, whose **paid-up share capital is Rs 80 lakh** and **turnover is Rs 1.80 crore** for the year ending 31st March, 2025. The **Board of Directors** wants to avail the status of a **small company**, and the question asks whether the **Company Secretary's contention** that **Silveroak cannot be categorized as a small company** is correct. [RTP Sep 25]

Answer: Although **Silveroak Private Limited** meets the **capital and turnover criteria**, it **cannot be classified as a small company** because it is a **subsidiary of Oakwood Private Limited**. Therefore, the **Company Secretary's contention is correct**.

Question: 17

STS Pvt. Ltd. has a **turnover of Rs 10 crore** and **paid-up capital of Rs 1 crore** (1,00,000 equity shares of Rs 100 each), out of which **60,000 shares are held by UV Infratech Pvt. Ltd.**; **ZX Ltd.** has **paid-up capital of Rs 3 crore** and **turnover of Rs 35 crore**. The question asks whether these companies can be treated as **Small Companies** under the **Companies Act, 2013**. [May 25 – 4 Marks]

Answer:

STS Pvt. Ltd. is a **subsidiary of UV Infratech Pvt. Ltd.** (holding 60% of shares as per **Section 2(87)**) and **cannot be classified as a Small Company**, even though it meets the capital and turnover thresholds.
ZX Ltd. is a **public company** and **cannot be treated as a Small Company** despite meeting the thresholds.

Question: 18

Resolution Private Limited has a **paid-up equity share capital of Rs. 50,00,000** (5,00,000 shares of Rs. 10 each), **turnover of Rs. 2,00,00,000**, and **Yellow Limited (a public company)** holds **2,00,000 equity shares** in it. The question is whether **Resolution Private Limited** shall be deemed a **small company** under the **Companies Act, 2013** when a public company holds significant equity shares. [Inter]

Answer:

As per **Section 2(85)**, a small company is one (other than a public company) whose **paid-up capital does not exceed Rs. 4 crore** and **turnover does not exceed Rs. 40 crore**, subject to exclusions (holding, subsidiary, Section 8, or special Act companies). Since **Resolution Pvt Ltd** is **not a subsidiary of Yellow Ltd**, is a **private company**, and its **capital (Rs. 50 lakh)** and **turnover (Rs. 2 crore)** fall within limits, it **qualifies as a small company**.

Government Company [Section 2(45)]

Question: 19

Whether **Shah Auto Pvt. Ltd.**, with ₹10 crore share capital (10 lakh shares of ₹100 each), becomes a **Government Company** when **Narendra Motors Ltd. (a Government Company)** holds **5,05,000 shares (more than 50% voting power i.e. 50.5 %)** in it. [RTP Nov 21] [RTP Dec 23] [RTP Jan 25] [RTP Sep 25]

Answer:

As per **Section 2(87)**, **Shah Auto** becomes a **subsidiary of Narendra Motors Ltd.**, and under **Section 2(45)**, a **subsidiary of a Government Company is itself a Government Company**; hence, **Shah Auto Pvt. Ltd. is rightly a Government Company**.

Question: 20

Whether **Z Pvt. Ltd.** can be called a **subsidiary** and a **Government Company**, when:

- The **State Govt. of X** holds **48 lakh shares** in **Y Ltd.**, whose total share capital is ₹9.5 crore (i.e., 95 lakh shares of ₹10 each) i.e. **50.52** and

- Y Ltd. holds 2,50,600 shares in Z Pvt. Ltd., which has a capital of ₹5 crore (i.e., 5 lakh shares of ₹100 each). (Dec 23 - 4 Marks) (MTP II Sep 24 - 7 Marks)

Answer:

As Y Ltd. holds **more than 50%** of Z Pvt. Ltd.'s shares, Z is a **subsidiary** of Y Ltd.
But since the State Govt. holds **less than 51%** in Y Ltd., Y is **not** a Government Company → so **Z Pvt. Ltd. is also not a Government Company.**

Question: 21

Can XYZ Ltd. be considered a **Government Company** when its shareholding as on 31.03.2024 is: GOI – 20%, Govt. of Tamil Nadu – 10%, Govt. of Rajasthan – 10%, LIC – 8%, ABC Ltd. (Govt. owned) – 15%? (June 24 - 4 Marks) (RTP Jan 25) (MTP II Jan 25 - 4 Marks)

Answer:

No, XYZ Ltd. is **not** a Government Company since **only 40%** is held by the Central and State Governments combined, which is **less than the 51%** required under Section 2(45) of the Companies Act, 2013. LIC & ABC Ltd.'s holding is **not counted** for this purpose.

Section 2(62): One Person Company (OPC)

Question: 22

Kamal, a Chartered Accountant, incorporated a **One Person Company (OPC)** on **1st October 2023** and initially nominated his **brother Sudhakar** as the nominee in the **Memorandum of Association**. Kamal now intends to **replace Sudhakar** with one of his shortlisted friends as nominee effective **1st January 2024**:

(1) **Robert**, an Indian citizen, who was a resident in India but shifted to **USA on 31st May 2022** and has not returned since, and

(2) **Dinkar**, an Indian citizen and non-resident in India, who came for employment in India on **1st April 2023** and has been continuously staying in India. The question asks about the **eligibility of the shortlisted friends** and the **procedure for changing the nominee** under the **Companies Act, 2013**. [Sep 2024 – 4 Marks]

Answer:

As per **Section 2(62) of the Companies Act, 2013**, a nominee must be a **natural person and Indian citizen**, with **residency in India optional**. Both **Robert and Dinkar are eligible**. The **procedure to change the nominee**: the **sole member gives notice to the OPC**, and the **company intimates the Registrar of Companies (RoC)**; such change **does not amount to an alteration of the memorandum**.

Question: 23

Mr. Raja formed an OPC with his brother Mr. King as nominee, who later withdrew consent —question is whether such **withdrawal is valid** and if **Mr. Shyam (minor son)**, **Ms. Devaki (non-resident Indian sister)**, and **Mr. Ashok (already OPC member)** are eligible to be nominees. [Nov 20 - 6 Marks]

Answer:

Yes, Mr. King can validly withdraw; Mr. Shyam is ineligible (minor), Ms. Devaki is eligible (Indian citizen, residency not mandatory), and Mr. Ashok is eligible (can be nominee in one OPC even if member in another).

Question: 24

Axar, engaged in **plant research**, invented a process for extracting **bio-fuel from plants** and proposes to commercialize it by forming a **One Person Company (OPC)**. He wants to appoint **himself and his wife as directors**. The question is about the **number of shareholders and directors OPC can have**. [ACT]

Answer:

As per **Section 2(62) of the Companies Act, 2013**, an **OPC can have only one person as a member/shareholder**. However, an OPC **may have more than one director on its Board**. Therefore, Axar can form an OPC, where **he will be the sole member**, and both **he and his wife can be directors** of the company.

Formation of Companies with Charitable Objects, etc. – Section 8

Question: 25

Harmony Foundation, a newly incorporated **Section 8 company** promoting **education and healthcare**, earned profit for the year ending 31st March 2024 and **transferred some profit to M/s LMP Associates**, a **partnership firm and member** of the company. The **Central Government**, after giving an opportunity of being heard, **directed the company to be wound up**, alleging that a **partnership firm cannot be a member** and the company **cannot transfer profit to it**. The question asks whether the **ground for winding up is sufficient** under the **Companies Act, 2013**. [Jan 25, 4 Marks]

Answer:

The **transfer of profit to M/s LMP Associates** is therefore a **valid ground for winding up**. However, a **partnership firm can be a member** of a Section 8 company, so the ground regarding membership is **incorrect and insufficient**. Hence, **only the profit transfer violation justifies winding up**; the membership ground does not.

EFFECT OF REGISTRATION: SECTION 9

Question: 26

A company was incorporated on **6th October**, but the **Certificate of Incorporation** was issued on **15th October**. On **10th October**, the company entered into a **contract** creating contractual liability. The company denies liability on the ground that the contract was made **before issue of the Certificate of Incorporation**. The question is whether the company can be exempted from such contractual liability. [ACT]

Answer:

As per **Section 9 (Effect of Registration)**, a company comes into existence **from the date of incorporation stated in the Certificate**, not from the date of its issue. Since the contract was entered **after incorporation (6th Oct)** but **before the certificate was issued (15th Oct)**, it is **binding on the company**, and the company **cannot escape liability**.

Section 2(52): Listed Company

- Means a company having **any of its securities** listed on a **recognized stock exchange**.

Proviso:

- Certain classes of companies **may be excluded** from this definition as **prescribed in consultation with SEBI**.

The term **securities** has the same meaning as in **Section 2(h) of the Securities Contracts (Regulation) Act, 1956 (Section 2(81) of Companies Act)**. An **unlisted company** is a company **other than a listed company**.

Classes of Companies on the basis of Liability

Question: 27

Nolimit Private Company is incorporated as an **unlimited company** with **share capital of Rs 10,00,000**. A creditor, **Mr. Samuel**, filed a suit against a shareholder, **Mr. Innocent**, for recovery of his debt from the company. The question asks whether **Mr. Samuel can directly recover his dues from Mr. Innocent**. [RTP Sep 24]

Answer:

As per **Section 2(92) of the Companies Act, 2013**, an **unlimited company** has **no limit on the liability of its members**, but a **member's liability arises only when the company is being wound up**. **Mr. Innocent, as a shareholder, cannot be directly held liable** for the company's debts while it is a going concern; his liability is limited to his **share capital**. His **unlimited liability** arises only if the **official liquidator calls for contribution towards the company's debts during winding up**. Therefore, **Mr. Samuel cannot directly recover his dues from Mr. Innocent**.

Public Financial Institution (PFI)

Question: 28

The **Rural Development Fin. Corp. Ltd.** has the following **shareholding pattern**: **Central Government – 26%, State Government – 18%, State of Tamil Nadu – 24%, Public – 32%**. The question asks whether this company can be considered a **Public Financial Institution (PFI)** under the **Companies Act, 2013** and requests a brief explanation of **various institutions regarded as PFIs**. [Jan 25 -5 Marks]

Answer:

As per **Section 2(72) of the Companies Act, 2013**, a **public financial institution** includes:

Institutions notified by the Central Government in consultation with the RBI, provided:

- It is **established or constituted by or under any Central or State Act** (other than Companies Act), and
- **Not less than 51% of the paid-up share capital** is held or controlled by the **Central Government or State Governments** or partly by both.

In the instant case:

- **Central Government shareholding = 26%**
- **State Government shareholding = 18% + 24% = 42%**
- **Total government holding = 26% + 42% = 68%** ✓
- This exceeds the **minimum 51% government ownership requirement**.
- The company is presumably **established under a State/Central Act**.

Therefore, **Rural Development Fin. Corp. Ltd.** qualifies as a **Public Financial Institution (PFI)** under the **Companies Act, 2013**.

Other examples of PFIs under the Act include:

- **Life Insurance Corporation of India** (established under LIC Act, 1956)
- **Infrastructure Development Finance Company Limited**
- **Specified companies under the Unit Trust of India Act, 2002**
- **Any other institution notified by Central Government in consultation with RBI**

Dormant Company

Question: 29

XYZ Ltd., incorporated to hold a **patent** for a new product, plans to start **commercial production within two years**. Meanwhile, it has placed a **purchase order for plant and machinery with a down payment of Rs 1 crore**. The question asks whether the company can acquire the status of a **dormant company** under the **Companies Act, 2013**. [Sep 2024, 3 Marks]

Answer:

As per **Section 455, Companies Act, 2013**, a **dormant company** is one formed for a **future project** or to **hold an asset/intellectual property** with **no significant accounting transaction**. Here, **XYZ Ltd.** has made a **significant accounting transaction (down payment of Rs 1 crore)**, therefore it **cannot acquire dormant company status**.

Question: 30

MTK Private Limited, registered under the **Companies Act, 2013** on **5th January 2021**, has **not started its business** till date. On **7th April 2023**, the company received a **notice from ROC for non-filing of FORM No-INC-20A**. The question asks under which **category** the company is classified and the **definition of that category**. (Dec 23 - 3 Marks)

Answer:

An **inactive company** is defined as a company which has **not carried on any business or operation**, or has **not made any significant accounting transaction** during the last **two financial years**, or has **not filed financial statements and annual returns** during the last **two financial years**. A **significant accounting transaction** excludes: (a) fees to Registrar, (b) payments to comply with laws, (c) allotment of shares to comply with laws, (d) payments for maintenance of office/records. Since **MTK Private Limited** has **not started business** and **more than two years** have elapsed, it is classified as an **inactive company**.

Nidhi Companies (Sec. 406(1))

- **Definition:** "Nidhi" or "Mutual Benefit Society" is a company declared as such by the **Central Government** via **Official Gazette notification**.
- **Purpose:** Primarily to **cultivate habit of thrift and savings** among its members.

MODE OF REGISTRATION/INCORPORATION OF COMPANY

Promoters (Sec. 2(69)):

- Person **named in prospectus** or **identified in annual return (Sec. 92)**.
- Person who **controls company affairs**, directly or indirectly (shareholder, director, etc.).

- Person whose **advice, directions, or instructions the Board usually follows.**
- **Role:** Conceive the idea, take steps for registration.
- **Exclusion:** Professionals acting only in **professional capacity** (solicitor, banker, accountant).

Formation of Company (Sec. 3):

- **Public Company:** 7 or more persons.
- **Private Company:** 2 or more persons.
- **One Person Company:** 1 person.
- **Requirement:** Subscribe to **Memorandum of Association** and comply with **Companies Act, 2013.**

Question: 31

What documents and information are required to be filed with the Registrar for the registration of a company under the Companies Act, 2013? **(MTP I May 25 7 Marks)**

1. Filing with Registrar:

- **Documents required:**
 - Memorandum & Articles of Association signed by subscribers.
 - **Declarations** by:
 - **Person engaged in formation** (advocate, CA, CS, cost accountant in practice).
 - **Persons named in Articles** (directors, manager, secretary) – confirming compliance with Act.
 - **Subscribers & first directors** – stating no convictions, fraud, misfeasance in last 5 years & correctness of documents.
- **Other particulars:**
 - Correspondence address till registered office established.
 - Subscriber details: name, address, nationality, proof of identity; if corporate, prescribed particulars.
 - First directors' details: name, DIN, address, nationality, interests in other firms, consent to act.
- **Note:** Particulars relate to individual subscribers, not professionals.

2. Certificate of Incorporation:

- Registrar registers documents & issues **Certificate of Incorporation** in prescribed form.

3. Corporate Identity Number (CIN):

- CIN allotted from date of incorporation; distinct identity for company; included in certificate.

4. Maintenance of Documents:

- Company must preserve all incorporation documents at registered office until dissolution.

5. False/Incorrect Information – Liability:

- **At incorporation:** Person furnishing false info or suppressing facts → liable under **Sec. 447 (fraud).**
- **Post incorporation:** If incorporation obtained by fraud/false info, promoters, first directors, declarants liable under **Sec. 447.**

6. Tribunal Powers (if incorporation obtained by fraud):

- Can regulate management, amend MOA/AOA.
- Can declare members' liability **unlimited.**
- Can remove company name from register.
- Can order **winding up.**
- Other orders as deemed fit.
- **Opportunity to be heard** must be given; transactions & obligations considered.

MEMORANDUM OF ASSOCIATION

1. Definition & Purpose:

- **Charter of the company;** defines **constitution and powers.**
- **Foundation** of the company.
- Contains **objects** to indicate scope of operations.
- **Public document (Sec. 399)** → presumed known by all contracting with the company.
- **Ultra vires acts** (beyond MoA powers) are void.

2. Form & Tables (Sec. 4 & Sch. I):

- Must follow **Tables A–E:**

- **A:** Limited by shares
- **B:** Limited by guarantee, no share capital
- **C:** Limited by guarantee, with share capital
- **D:** Unlimited company
- **E:** Unlimited with share capital
- MoA & AoA should **closely follow model forms**.

3. Contents / Clauses:

- **Name Clause:**
 - Public → “Limited”; Private → “Private Limited”
 - OPC → “One Person Company”
 - Section 8 → “Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust” etc.
- **Registered Office Clause:** State of registered office.
- **Object Clause:** Company’s purposes & matters for furtherance.
 - If activities change, **name must reflect new activities within 6 months**.
- **Liability Clause:**
 - Shares: members liable up to unpaid amount
 - Guarantee: members liable up to agreed contribution for debts & winding-up
- **Capital Clause:** Authorized capital & number of shares; subscribers’ share commitment.
- **Association Clause:** Details of subscribers; each must take at least 1 share; OPC must mention successor member.

4. Signing Requirements:

- **Public:** ≥7 subscribers; **Private:** ≥2; **OPC:** 1
- Signed in presence of **witness**; witness attests signature.
- **Minor cannot sign**; guardian may sign on behalf.

5. Other Points:

- MoA may contain **other provisions** (e.g., rights attached to shares).
- MoA **cannot contravene Companies Act**; contrary provisions are **void**.

ARTICLE OF ASSOCIATION

Entrenchment Clause

Question: 32

Justice Private Limited, with **9 directors**, currently has its **Articles of Association** stating that the **quorum for board meetings** shall be **1/3rd of total strength or 2 directors, whichever is higher**. The company intends to **amend the article** to specify the quorum as **1/3rd of total strength or 4 directors, whichever is higher**. The question asks about the **procedure for including this entrenchment provision** and whether the advice differs for a **public company**. [Jan 2025 - 3 Marks]

Answer:

As per **Sections 5(4) & 5(5) of the Companies Act, 2013**, an **entrenchment provision** can be included:

- For a **private company**: **consent of all members** is required and **notice must be given to the Registrar**.
- For a **public company**: it requires a **special resolution** and **notice to the Registrar**.

Hence, **Justice Private Limited** can include the entrenchment provision with **all members’ consent and registrar notice**, while for a **public company**, the procedure **differs by requiring a special resolution**.

MoA vs AoA

1. Objectives:

- **MoA:** Defines & limits the company’s objectives.
- **AoA:** Lays down rules for internal management; determines **how objectives are achieved**.

2. Relationship:

- **MoA:** Company ↔ outside world.
- **AoA:** Company ↔ its members.

3. Alteration:

- **MoA:** Can be altered only under Act; usually requires **Regional Director/Tribunal** approval.
- **AoA:** Can be altered via **special resolution**.

4. Ultra Vires Acts:

- **MoA:** Acts beyond scope → **void**, cannot be ratified.
- **AoA:** Acts beyond AoA but within MoA → **can be ratified** by special resolution.

Effect of Memorandum and Articles

Question: 33

What is the effect of Memorandum and Articles when registered? [Sep 24, 2 Marks]

As per **Section 10**, once **Memorandum and Articles** are registered, they bind the **company** and its **members** as if signed by both, creating an **agreement** to observe all their provisions. Further, **any monies payable by a member** under these documents shall be treated as a **debt due to the company**.

Doctrine Of Ultra Vires

1. Meaning:

- **Ultra vires** = “beyond the powers” of the company or directors.
- Acts beyond the powers conferred by **MoA** or law are **void and inoperative**.

2. Legal Consequences:

- Company **cannot be sued** on an ultra vires transaction, nor can it sue.
- **Public document (MoA)** → all parties deemed to know company powers.
- **Lender protection:** Money not spent ultra vires remains recoverable; if spent for lawful purpose, lender can recover to that extent.
- Ultra vires acts **cannot be ratified by shareholders**, if beyond company powers.

3. Ratification / Regularisation:

- **Ultra vires directors’ act** (but intra vires company) → can be ratified by shareholders.
- **Ultra vires Articles** → can be regularized by altering Articles via **Special Resolution**.
- **Acts intra vires but irregular** → can be validated by shareholders.

4. Case Law:

- **Ashbury Railway Carriage & Iron Co. v. Riche (1875):**
 - Contract beyond main objects → ultra vires → void, even if ratified by shareholders.
 - “General contractors” must be read in context of company’s main business.

5. Key Principles Summary:

- Act legal in itself but beyond **MoA/statute** → **ultra vires**, void.
- Ultra vires the company → cannot be ratified by shareholders.
- Ultra vires directors but intra vires company → can be ratified.
- Ultra vires Articles → can be ratified by altering Articles.
- Doctrine protects shareholders/creditors but can limit company’s flexibility; object clause can now be easily altered via **Special Resolution**.

Question: 34

JV Limited borrowed a **secured loan of Rs 5 crore** from **Star Bank Limited** for working capital, but its **borrowing powers under the MoA were restricted to Rs 1 crore**. The bank released the loan in **two instalments of Rs 1 crore and Rs 4 crore**. On repayment, the company **refused liability** on the ground that the borrowing was **ultra vires**, though **Rs 3 crore of the loan was used to repay lawful debts** and the remaining **Rs 2 crore cannot be traced**. The question asks whether the company’s denial of repayment is valid under the **doctrine of ultra vires** and the **remedies available to the bank**. [Sep 24 - 4 Marks]

Answer:

As per the **doctrine of ultra vires under Companies Act, 2013**, any act **beyond the powers of the company as per its MoA is void**. Borrowing beyond Rs 1 crore was **ultra vires**, so the company **cannot be compelled to repay Rs 4 crore** (excess amount). However, since **Rs 3 crore was applied for lawful purposes**, the **bank can recover this amount** as it steps into the shoes of the creditors paid off. The **remaining Rs 1 crore** (untraceable portion) **cannot be recovered**.

Question: 35

The **object clause** of **ABC Pvt. Ltd.** authorized the company to **trade in property in Gurgaon**. The **directors**, without **member approval**, borrowed **Rs 5 crore from Magnum Finance Ltd.** to enter the **construction business**. The company **refused repayment**, and the question asks the **recourse available to Magnum Finance Ltd.** under the **Companies Act, 2013**. [May 25 – 4 Marks]

Answer:

As per the **doctrine of ultra vires**, any act **beyond the powers of the company as per its MoA is void**. Taking a loan for **construction business** is **ultra vires**, so **ABC Pvt. Ltd. is not bound** to repay the loan. However:

- (a) If the loan amount was **utilized for lawful debts**, **Magnum Finance Ltd. can recover that portion** as it steps into the shoes of the creditor.
- (b) If the amount is **unspent**, the lender can **seek injunction** to prevent unauthorized use and **recover the unspent loan**.

Question: 36

The **objects clause** of **XYZ Pvt. Ltd., New Delhi** authorized the company to **trade in mangoes**. The company entered into a **partnership with Mr. A** for trading in mangoes and **incurred liabilities**, but later **refused to admit the liability** on the ground that the agreement was **ultra vires**. The question asks whether the **company's stand is legally valid**. [ACT]

Answer:

The **company's stand is legally valid**. The **partnership agreement** is **ultra vires** the company because the **object clause does not expressly authorize entering into a partnership**. As per the **doctrine of ultra vires**, the contract is **void ab initio** and **not binding** on the company or the other party.

Doctrine Of Indoor Management

1. Constructive Notice (Sec. 399):

- MoA & AoA are **public documents**, available for inspection.
- **Presumed knowledge**: All persons dealing with the company are deemed to know contents, whether read or not.
- Includes **other registered documents** (e.g., special resolutions).
- Contracts beyond company powers or directors' authority → **cannot acquire rights** against company.

2. Doctrine of Indoor Management:

- **Exception to constructive notice**; outsiders can assume **internal formalities are properly observed**.
- Outsiders are entitled to presume that acts within apparent authority are valid.
- Established in **Royal British Bank v. Turquand (1856)**.

3. Key Principle (Turquand Rule):

- Company's **internal irregularities are its own problem**.
- Outsiders are protected when acting in **good faith** on acts within authority.

4. Exceptions / Limitations:

(a) **Actual or constructive knowledge of irregularity** – no protection (e.g., Howard v. Patent Ivory Mfg.; Morris v. Kansseen).

(b) **Suspicion of irregularity** – duty to inquire if transaction unusual or outside ordinary course (e.g., Anand Bihari Lal v. Dinshaw; Haughton & Co. v. Nothard).

(c) **Forgery** – Turquand Rule does **not apply**; forged acts are null (e.g., Ruben v. Great Fingall).

5. Practical Effect:

- Outsiders dealing with company **need not verify internal approvals**, unless they **know, suspect, or deal with forgery**.

Question: 37

Mr. R, a toy manufacturer, purchased **raw material worth Rs. 1,50,000** from **MNO Pvt. Ltd.** on a **one-month credit**. Before the due date, he **paid Mr. C**, an employee at the **billing counter**, who issued a **signed and sealed receipt**. Later, the company **sent a recovery notice** claiming non-payment. The question asks about the **liability of Mr. R** under the **Companies Act, 2013**, and whether the outcome differs if **no receipt under company seal** was issued.

[Nov 22 - 4 Marks]

Answer:

- As per the **doctrine of indoor management (Royal British Bank v Turquand)**, outsiders are entitled to **presume internal regularity**.
- **Mr. R is not liable** to pay Rs. 1,50,000 since he had **genuine reasons to trust Mr. C**, and **receipt under company seal** was issued.
- If **no receipt was issued**, Mr. R **would be liable**, as the **doctrine does not protect negligence**; he had a duty to **verify Mr. C's authority** to receive payment.

Question: 38

The **Articles of Association of XYZ Pvt. Ltd.** allowed the **Board of Directors** to take loans up to **Rs. 50,00,000** by **Board Resolution**, and amounts above that required a **Special Resolution** in the **general meeting**. The Board, in urgent need, applied for a loan of **Rs. 60,00,000** from a **reputed bank** without passing the Special Resolution but **gave an undertaking** that it was passed. The company later **denied liability**, claiming the act was **ultra vires**. The question asks whether the **bank can recover the loan**. [RTP June 23]

Answer:

As per the **doctrine of indoor management (Royal British Bank v Turquand)**, outsiders are entitled to **presume internal regularity**. The **bank can recover the loan** from the company because it **relied on the Board's undertaking**, and there is **no requirement for the bank to verify the internal proceedings**. The transaction is **binding on the company**, despite the internal irregularity.

Features of a Company

1. Separate Legal Entity:

- Company has **own legal personality** distinct from its members.
- Can **own property, incur liabilities, enter contracts, raise loans**, and sue or be sued.
- Shareholders **do not own company property**; no insurable interest (e.g., *Macaura v. Northern Assurance*, 1925).

2. Perpetual Succession:

- Company **continues despite death, insolvency, or change of members**.
- Only law can terminate the company via **winding up**.

3. Limited Liability:

- **Limited by shares:** Members liable only up to unpaid share value.
- **Limited by guarantee:** Liability limited to amount guaranteed.
- **Unlimited company:** Members have **unlimited liability**.

4. Artificial Legal Person:

- Created by law, not natural birth.
- Can act like a person (**own property, contract, sue & be sued**) except natural acts (marriage, jail, oath).
- Acts **through directors**, who are not agents of members.

5. Common Seal:

- Official signature of the company; used to authenticate documents.
- **Optional** under Companies (Amendment) Act, 2015.
- If no seal, authorization by **two directors or director + company secretary**.

Perpetual Succession

Question: 39

M and N, holding **70% and 30% shares** in a company, **died in an accident**. The question asks about the **legal effect on the company** under the **Companies Act, 2013**. (June 24 - 3 Marks)

Answer:

The company has **perpetual succession**. The **death of M and N does not affect the existence** of the company. Their **shares will be legally transmitted to their heirs**, and the company **continues to exist** as an **artificial person under law** until it is formally wound up.

Common Seal

Question: 40

Goodwill Private Limited, incorporated on **15th May 2024**, issued **share certificates** to its subscribers **Amit, Sumit, and Sumati**. The **certificates were issued without affixing the common seal** and were **signed by Amit and Sumit**, the directors of the company. The company has **not yet appointed a Company Secretary**. **Sumati, a director, objected** to the validity of the share certificates signed only by the other two directors. Amit and Sumit **clarified** that the share certificates are valid as the company opted **not to have a common seal**. The question asks whether the **objection and the clarification** are correct, and whether the answer **would differ if the company had a Company Secretary**. [Sep 24 - 3 Marks]

Answer:

As per the **Companies Act, 2013**, since the company **opted not to have a common seal**, the **share certificates signed by two directors** are **valid** because no Company Secretary is appointed. The **objection of Sumati is not valid**, and the **clarification by Amit and Sumit is correct**. If the company **had a Company Secretary**, the **share certificate would need to be signed by a director and the Company Secretary**, so the **answer would differ** in that scenario.

CORPORATE VEIL THEORY [June 23, 6 Marks]

1. Definition:

- **Corporate Veil** = legal concept separating the company's identity from its members.
- Members are **shielded from liability** for company's debts or legal violations.
- Provides **corporate insulation** to shareholders.

2. Legal Basis:

- Established in **Salomon v. Salomon & Co. Ltd. (1897)**.
- **Company = separate legal entity** from its members.
- Shareholders' liability limited to **extent provided by law**; not liable for company's acts even if they hold majority of shares.

3. Lifting/Piercing the Veil:

- **Lifting the veil** = disregarding corporate entity to look at **real actors behind the company**.
- Courts lift veil **only in exceptional circumstances**, mainly involving **control, fraud, or improper conduct**, not mere ownership.

4. Principle:

- Company has **own existence**, distinct from shareholders.
- Acts of company are **not acts of members**, even if they manage the company.

When Corporate Veil is Lifted [June 23, 6 Marks]

1. To determine character of company (enemy or friend):

- *Daimler Co. Ltd. v. Continental Tyre & Rubber Co.* → Court may see who controls the company (enemy control → enemy company).

2. To protect revenue/tax:

- *S. Berendsen Ltd. v. Commissioner of Inland Revenue* → veil lifted in tax matters.
- *Juggilal v. CIT* → to prevent tax evasion.
- *Dinshaw Maneckjee Petit* → company a **sham**; income diverted through private companies; veil lifted.

3. To avoid a legal obligation:

- *Workmen of Associated Rubber Industries Ltd. v. Associated Rubber Industries Ltd.* → subsidiary formed only to reduce bonus liability; veil lifted.

4. Formation of subsidiaries to act as agents:

- *Merchandise Transport Ltd. v. British Transport Commission (1982)* → subsidiary used as agent to obtain licence; treated as one commercial unit.

5. Company formed for fraud / improper conduct / to defeat law:

- *Gilford Motor Co. v. Horne* → incorporation used to avoid legal obligations; veil lifted.

SHARES [MTP Sep 25]

1. Definition (Sec. 2(84))

- **Share** = proportion of interest in a company's share capital, includes stock.

- Represents **interest in company assets** corresponding to amount paid.

2. Nature of Shares:

- **Interest, not ownership:** Shareholder has **rights & obligations** as per MoA, AoA, and Companies Act; not a part-owner of the undertaking (Borland Trustees v. Steel Bors).
- Shareholder has **contractual rights** and statutory rights under the Act.

3. Movable Property (Sec. 44):

- Shares, debentures, or other interests of a member = **movable property**, transferable as per AoA.

4. Numbering of Shares (Sec. 45):

- Every share in a company with share capital must have a **distinctive number**.
- Exception: Shares held in **depository as beneficial interest** need not be numbered.

Kinds of share capital (Dec 23 - 6 Marks)

1. Equity Share Capital

- Can be of two types:
 1. **With voting rights**
 2. **With differential rights (DVRs)** as to:
 - Dividend
 - Voting
 - Other rights (as per prescribed rules)
- **Example:** Tata Motors' 'A' equity shares (2008) – 10 shares = 1 vote but +5% dividend.
- **Definition:** All share capital which is **not preference share capital**.

2. Preference Share Capital

- Carries **preferential rights** regarding:
 - a. **Dividend** – fixed amount or at fixed rate (tax-free or taxable)
 - b. **Repayment on winding up** – preferential repayment of paid-up capital (with or without fixed premium)

3. Exception

- **Private companies:** Sec 43 does **not apply** if MOA/AOA provides otherwise.

Question: 41

What do you mean by the term capital? Describe its classification in the domain of Company Law. [Dec 21 – 6 Marks] [MTP II May 25- 7 Marks]

Answer:

In the context of a **company limited by shares**, **capital** means **share capital**, i.e., contributions of members to the **common stock** of the company. A **share** is an interest measured by money and represents various rights. Under the **Companies Act, 2013**, capital is classified as follows:

1. **Authorised / Nominal Capital** [Sec. 2(8)] – Maximum share capital authorized by **MOA**; also called **registered capital**; stamp duty payable on this amount.
2. **Issued Capital** [Sec. 2(50)] – Part of authorised capital issued for subscription; includes shares issued for **non-cash consideration**.
3. **Subscribed Capital** – Portion of issued capital subscribed by members/public. If authorised capital is disclosed, **subscribed and paid-up capital** must also be disclosed; non-compliance leads to **penalty: ₹10,000 (company) + ₹25,000 (officer in default)**.
4. **Called-up Capital** – Amount called for payment on shares issued.
5. **Paid-up Capital** – Actual amount paid or credited as paid-up; equals **called-up capital – calls in arrears**.