

CA Inter - Corporate and Other Law Test 1

Chapter - Incorporation of Company

Total marks - 30

Time - 60 mins

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**Question 1: (5 marks)**

Mr. Raja along with his family members is running successfully a trading business. He is capable of developing his ideas and participating in the market place. To achieve this, Mr. Raja formed a single person economic entity in the form of One Person Company with his brother Mr. King as its nominee. On 4th May 2020, Mr. King withdrew his consent as Nominee of the One Person Company. Can he do so under the provisions of the Companies Act, 2013? Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Co. as on 5th May 2020 under the above said Act.

- (i) Mr. Shyam, son of Mr. Raja who is 15 years old as on 5th May 2020.
- (ii) Ms. Devaki an Indian Citizen, sister of Mr. Raja stays in Dubai and India. She stayed in India during the period from 2nd January 2019 to 16th August 2019. Thereafter she left for Dubai and stayed there.
- (iii) Mr. Ashok, an Indian Citizen residing in India who is presently a member of a 'One Person Company'.

**Answer**

Relevant provisions

As per section 3 of the Companies Act, 2013, the memorandum of One Person Company (OPC) shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.

The other person (nominee) whose name is given in the memorandum shall give his prior written consent in Form INC-3 and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association.

Such other person (nominee) may withdraw his consent in such manner as follows:

- Nominee may withdraw consent by giving a notice in writing to the sole member and to OPC.
- Sole member shall nominate another person within 15 days of such withdrawal.
- Send intimation of such nomination + written consent (Form INC 3)
- OPC to inform RoC in Form INC-4 within 30 days of withdrawal of nomination.

Analysis:

Therefore, in terms of the above law, Mr. King, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company.

**Conclusion:**

Following are the answers to the second part of the question as regards the eligibility for being nominated as nominee:

(i) No minor shall become member or nominee of the OPC. Therefore, Mr. Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.

(ii) Only a natural person who is an Indian citizen whether resident in India or otherwise, shall be a nominee or the sole member of a One Person Company. The term "Resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year. Here Ms. Devaki though an Indian Citizen and a resident in India. So, she is eligible for being nominated as nominee of the OPC.

(iii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, a person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than 1 OPC. Mr. Ashok, an Indian Citizen residing in India who is a member of an OPC (Not a nominee in any OPC), can be nominated as nominee.

**Question 2: (4 marks)**

The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also state the relevant provision of the said Act dealing with entrenchment provisions.

**Answer:**

As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met. The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner.

**Question 3: (5 marks)**

Examine the validity of the following different decisions/proposals regarding change of office by A Ltd. 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 is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from Pune to Mumbai under the authority of a Board resolution.
- (iii) 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.

**Answer**

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 as both the places are falling within the jurisdiction of the Registrar of Mumbai. 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.

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.

**Question 4: (5 marks)**

Mr. Bindra is holding 950 equity shares of Bio safe Herbals, a section 8 company. Bio safe Herbals is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. Examine whether the act of the company is in accordance with the provisions of the Companies Act, 2013.

**Answer:**

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 Bio safe Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not in accordance to the provisions of the Companies Act, 2013.

**Multiple Choice Question (2 marks each)**

1. (c) 31st March 2023
2. (b) The company can alter its MOA by passing an SR at the shareholders meeting.
3. (a) 20 days from date of approval
4. (c) Control of at least 20% of total voting power
5. (b) Small Company
6. (b) Funds Flow Statement